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ORIGINAL

GUAM LAND USE COMMISSION REGULAR MEETING MINUTES



Department of Land Management Conference Room ITC Building, Tamuning



Thursday, April 14, 2016 1:45 p.m. to 5:15 p.m.

GUAM LAND USE COMMISSION Regular Meeting Thursday, April 14, 2016

Department of Land Management Conference Room 3rd Floor ITC Building, Tamuning

MEMBERS PRESENT:

Mr. John Arroyo, Chairman

Mr. Victor Cruz, Vice Chairman

Ms. Beatrice "Tricee" Limtiaco, Commissioner

Mr. Tae Oh, Commissioner

Mr. Michael Borja, Executive Secretary

Ms. Kristan Finney, Legal Counsel

[Excused Absence: Commissioner Conchita Bathan]

PLANNING STAFF PRESENT:

Mr. Marvin Aguilar, Guam Chief Planner

Mr. Frank Taitano, Case Planner

Mr. Penmer Gulac, Case Planner

Ms. Celine Cruz, Case Planner

Ms. Cristina Gutierrez, Recording Secretary

GUAM LAND USE COMMISSION GUAM SEASHORE PROTECTION COMMISSION Attendance Sheet

Department of Land Management Conference Room 590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

Date of Meeting: Thursday, April 14, 2016	- Control of the Cont
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COMMISSION MEMBERS	SIGNATURE
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Conchita D. Bathan, Commissioner	Excused Absence
Beatrice "Tricee" P. Limtiaco, Commissioner	
Victor F. Cruz, Commissioner	ac
Tae S. Oh, Commissioner	
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Michael J.B. Borja, Executive Secretary	MB'
Kristan K. Finney, Lega! Counsel	Ktap E. Fr
Marvin Q. Aguilar, Chief Planner	0
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Celine Cruz, Planner IV	com-6
Jeffrey Baker, Planner II	V
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ADJOURNMENT: 5:15 pm	

GLUC Form 19 - GLUC Commission Attendance Sheet

GUAM LAND USE COMMISSION GUAM SEASHORE PROTECTION COMMISSION

Speaker's Sign-In Record

Location: Department of Land Management Conference Room 590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

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PERM BROOKS 1	ABT	472-6848
PAN SOLAVELY	ABT	688-8025
P. TUDD THOUPSON	ABC, TVC.	14722089
Steven Ktsowsom	or Aluprys Beach Class	687-5381
Harry Oupon	ABC	727-5387
Achard Sana	FCB Planners	687-9865
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GUAM LAND USE COMMISSION GUAM SEASHORE PROTECTION COMMISSION

Public Attendance Record

Location: Department of Land Management Conference Room 590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

X GLUC	X Regular Date: Thursday, Apr	il 14, 2016
GSPC	Special Time: 1:45 pm	
Quorum	No Quorum Adjournment: 5: 1	2 bm
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GUAM LAND USE COMMISSION REGULAR MEETING MINUTES

Department of Land Management Conference Room, ITC Bldg. Thursday, April 14, 2016 • 1:45 p.m. to 5:15 p.m.

I. Notation of Attendance

Chairman Arroyo called to order the regular meeting of the Guam Land Use Commission for Thursday, April 14, 2016 at 1:45 p.m., noting a quorum.

Present today were: Chairman John Arroyo, Vice Chairman Victor Cruz, Commissioners Tricee Limtiaco and Tae Oh, Executive Secretary Michael Borja, Legal Counsel Kristan Finney, Chief Planner Marvin Aguilar, Planning Staff Celine Cruz, Penmer Gulac and Frank Taitano and Recording Secretary Cristina Gutierrez

II. Approval of Minutes

<u>Chairman Arroyo</u> good afternoon everybody. Let's go through the Minutes before we talk about the rest of the agenda.

Today we need to approve the Minutes for two (2) meetings; the February 25th, 2016 (recessed) and March 10th, 2016 (reconvened/adjournment) Minutes. You've all had an opportunity to review them ---

Commissioner Limtiaco Mr. Chair, I'm sorry. The clarification...the meeting of March 10th wasn't that a continuation of the February 25th meeting?

<u>Chairman Arroyo</u> yes it was and so it should just be one meeting.

Commissioner Limtiaco held two different days.

Chairman Arroyo correct. So, if there aren't any questions ---

<u>Commissioner Limtiaco</u> Mr. Chair, I move to approve the Minutes of the Guam Land Use Commission's regular meeting which began on February 25th, 2016 and continued and completed on March 10th, 2016 with any edits or comments to be submitted to our Recording Secretary by end of business day.

<u>Chairman Arroyo</u> moved by Commissioner Limtiaco; can I have a second.

Vice Chairman Cruz I second.

Chairman Arroyo seconded by Vice Chair. All in favor of approving the Minutes say "aye" [Chairman Arroyo, Vice Chair Cruz, Commissioners Limtiaco and Oh], all opposed say "nay."

Chairman Arroyo okay Cris, the Minutes are approved.

[Motion to approve the Minutes of February 25 (Recessed)/March 10, 2016 (Reconvened and adjourned) was passed unanimously subject to any edits and/or corrections submitted. For the record - no corrections and/or edits received by the Recording Secretary. Minutes passed with 4 votes, 0 nav1

Chairman Arroyo okay on the agenda - as you can tell my voice I'm not firing on all eight cylinders today, and so I don't know how long my voice is going to hold out. So at some point in the meeting, I'm going to turn the chair over to the Vice Chair so he can continue on with the balance of the meeting. So with that in mind, I want to get to the one that is probably the most complicated application on our agenda and see if I could move it up; it's Item D on Administrative and Miscellaneous Matters, to move that up to the very top of our agenda. Is that okay with everybody [no objections noted from the Commissioners]. Okay, so we're going to go ahead and make that change. We're going to move that up to the first one. But before we get there to the new business, any old business to discuss?

Marvin Aguilar (Chief Planner) nothing at this time sir.

III. Old Business [None noted]

Chairman Arroyo okay, so moving forward ---

Administrative and Miscellaneous Matters

Horizontal Property Regime

D. The Applicant, Alupang Beach Tower; requests issuance of its supplementary final public report for the Alupang Beach Condominiums on Lot #2015-1-REM-NEW-2 and Lot 131-REV-Unit 1, in the Municipality of Tamuning, in a "C" (Commercial) zone, HPR No. 92, under Application No. 1992-39C. Case Planner: Celine Cruz

Vice Chairman Cruz Mr. Chairman, on the lot numbers that you read the last one should read "REV-Unit 1" not "REM."

Chairman Arroyo "REV-Unit 1" thank you. [Correction noted for the record] Celine ---

<u>Celine Cruz</u> summarized the staff report to include chronological facts, purpose, staff analysis/discussion, conclusion and recommendation. [For full content/context of the staff report, please refer to Attachment D.]

[Attachment D – Staff Report dated March 31, 2016]

<u>Chairman Arroyo</u> any comments, questions for the staff? Granted this was a really complicated read. Thank you for the Minutes that you included in your packet. It really shed some light on the issues that's facing this project and some of the challenges previous Commission members had to go through in order to sort things out to arrive to where we are finally today. And so at this point in time what we're trying to do is play catch-up, is to except the first supplementary final public report. Is there any indication from the applicant why they failed to submit it on time?

Celine Cruz there was no explanation provided other than it was an oversight on their part.

<u>Chairman Arroyo</u> and this was supposed to be submitted when?

<u>Celine Cruz</u> usually the process is when a Notice of Action is issued that information is shared with the applicant, and when they receive a copy of the Notice of Action they can submit documents for signature of the Executive Secretary and then that document gets recorded.

Chairman Arroyo and so shortly after the NOA is recorded.

<u>Celine Cruz</u> it will happen within two or three weeks usually.

Chairman Arroyo I'm sorry, when did you say the NOA was recorded? July 15th 2012?

Celine Cruz yes; sorry, the Notice of Action was recorded on August 8th, 2012.

Chairman Arroyo so we're several years back.

Celine Cruz yes.

Chairman Arroyo questions?

Commissioner Limtiaco Celine, I always hear an August, July of 2012. It does seem familiar. I'm a little unclear though; it seems ... I wasn't really following, I wasn't recording the ... the ownership percentage as I was reading documents, but it seems that the ownership percentage has changed or at least it's reported changed as far as percentage goes. Do you recall...I was trying to look back as of August or July 2012 when we heard this application; do you recall the ownership percentage of the majority owner at that point which was the Cho group? It's okay if you can't right now. Again, as the Chair said this is a real technical, it's technical and it is rich with history, very, very, interesting history here. The reason why I bring this up is because in 2012 we were looking at a conversion, and so generally when this Commission hears matters

related to HPR, the timeframe notice to the Commission is generally thirteen months. So every thirteen month increment, if not sooner, we usually hear from the applicant is by way of a status report or actually (and I don't recall of) an applicant to come in earlier to give us a status report right away. But I would assume that since 2012 ownership may have changed. So are you aware that ownership may have changed between Notice of Action which was recorded in August 2012 to today?

Celine Cruz I am not aware; but, based on the documents submitted in 2012 which was the copy of the first amendment to the replacement declaration of horizontal property regime and the most recent document which was submitted as a request to the Guam Land Use Commission, the exhibit that identifies the percentage of ownership it appears to be the same document. So in the application packet, Tab 3, it's noted as Exhibit 1.

<u>Chairman Arroyo</u> any other questions? [None noted] Okay, so we'll invite the applicant or the applicant's representative to come forward. If you could just state your names for the record please.

[At the table - Mr. Daniel Swavely and Terry Brooks, representing the Applicant]

<u>Terry Brooks</u> thank you for hearing us today. As mentioned previously the Cho group is seeking a supplemental final public report. The reason for the oversight I believe is that when they submitted their package there was contained inside it a proposed final public report. And so I guess that it was just assumed that that was sufficient and that it would be signed and filed. They just didn't follow up on that. So, we apologize for that oversight. I believe that's what happened.

Chairman Arroyo Terry, when was it noticed that it wasn't filed and recorded.

Terry Brooks I think it was just early this year.

Chairman Arroyo what triggered the...them catching the oversight.

Terry Brooks I think it had to do with re-financing.

Chairman Arroyo okay, go ahead.

<u>Terry Brooks</u> I do know that the objection has been filed by the ... a tenant in the building, just to address that issue. We believe that at this point since it's kind of an administrative action here all of these issues have been addressed, reviewed and approved by this Commission several years ago. So, we are just asking that the Commission provide the supplemental final public report at this time.

<u>Chairman Arroyo</u> any questions? [None noted] I think through the Minutes we found that there were at least two technical working sessions held without with the public where a lot of (I guess) some of the confusion was ironed, and I don't think that I or any one of the members of the Commission today want to revisit that. I think we'll leave it to the wisdom of the previous Chairman, Jay Lather and his members; Tricee (Commissioner Limtiaco) was there at that time too and I don't believe there is any reason for us to go over that once again.

Terry Brooks I agree.

<u>Chairman Arroyo</u> there were issues I think regarding the density and how that went about and whether a liability still exists; but, those issues were asked and answered and so I think we'll just go ahead and move on. If there aren't any questions, then I'd like to open the floor for public comment.

Would anybody like to give comment, please come forward and state your name for the record. I'm sorry, for the record; we received (this wasn't part of the package that came to us earlier last week), a letter from Attorney Todd Thompson who is representing Mr. Steven Kasperbauer. Is that correct:

Todd Thompson actually representing ABC Incorporated.

<u>Chairman Arroyo</u> and the letter addresses several issues, historical issues and some objections to the application that's in front of us today. Has everybody had an opportunity to read this letter? (Commissioners responded "yes.") Okay, go ahead ---

[For full content/context of Attorney Thompson's correspondence dated April 13, 2016, please see Exhibit 1.]

PUBLIC COMMENT

Todd Thompson (I am the author of this letter). Unlike many of the actors involved in this project over the years, I'm a newcomer to this. This is actually the fourth day (I think) that I've been able to look into this matter. And the reason is that the way the ABC got notice of this matter was by reading the newspaper and seeing it on the agenda item, and that's all the heads up that we had for this. So, I apologize if perhaps I've said things in here that are a little long-winded, perhaps things that seem a bit pointed or accusatory; but we had kind of had to put this together on a fly. We were also surprised about this because on its terms the Notice of Action that this Commission issued essentially expires after a year, it's not actionable at that time. And what has been done since then the last four years a very long period of time owners have come and gone, no notice, no additional notice of these proceedings have been received; and essentially we would invite the Commission, albeit there was a lot done in the past thanks to change, and there's reason to take a look at what has happened before.

Reviewing the Minutes as I have in the past few days, cursory review I admit; there was only four issues that came to the floor during proceedings. One is that Mr. Chairman has already stated in the staff report, very complicated issues. If you read the Minutes you'll see frustration amongst the Commissioners trying to grapple with what was being done here; conversions back and forth, apartments to condominiums, density issues, parking issues, a lot of moving parts here. So that's one point, a very complicated plan.

The other is inexplicable density. The fact that on the face of things the density permitted was simply far in excess then what the standard was for a residential complex of this type. The third concern was parking. We initially know that Chairman Lather said was that well we went to a hotel, initially approved for hotel utilization because that would alleviate parking, and now we're going back to a condo and condo units have much more parking than hotels. I think anyone can tell you. The final issue was the concern of the Commission back in 2012 and 2008 when this first came up was we have to be careful here because we're setting precedent for other applicants. And if we brush aside the density issues and the parking issues and the other matters, what are we saying for future applicants. This is a new Board and in four years, I believe that just one member is still constant from the Boards before, the Commissions before, and I know that this all hits you in the face as much as it did me four days ago when I woke up and saw this on my plate. But, we were very disturbed by what we saw that was happening and more than anything the way it was treated. We just think there's no adequate notice to anyone. There are new unit owners who have never received notice of any of this. They'll be all waking up and it's all going to be a surprise. Mr. Kasperbauer who's been keenly concerned of this issues for decades now learned about this by reading the newspaper. We just don't think that the light of sunshine has come in on this process. At the very least we would urge the Commission to take a time out. Count to twenty. See where we are on this. It's not going to trouble anyone to give proper notice under the Bylaws; notice of a special meeting insofar as the condominium Bylaws are, and additional notice at this level with the Commission.

The lack of notice issues have been plaguing this project for so many years and I won't go into the past judicial history of this. My old firm was part of that many years ago. I certainly wasn't part of it. But I will say that it wasn't just ABC that was concerned about sunshine and process and due process and notice. The Superior Court of Guam through Judge Lamorena actually put the condominium association receivership back in 2004 based on very deep concerns about failure to treat the minority owners as owners; the failure to give them notice of proceedings such as this one today, and that's all we're asking for. I know that it's painful to go back and relitigate something that the Commission thought was closed. But there are reasons to question the propriety what was done four years ago. Not questioning one's motives here on the Commission, but on its face the Notice of Action says things that just don't measure up if you review the Minutes. I don't know if we have time to go into those in detail, but essentially the...essentially it says that there was recognition that the density was at an unsustainable level, but that must have been grandfathered in in the past by the Territorial Land Use Commission. And if you go back to the Minutes, at least my review of them, and (undecipherable) cursory, I didn't find that in there. In fact to the contrary there was great concern by Chairman Lather and others that this is a dangerous road we're going down by

trying to grandfather in something that was done in the past without being able to see why and then granting a replacement HPR which not only says what was done before was okay, but then it's okay to increase the density even further. So piling on, that's essentially what I wanted to say here to you. In my letter I think it says it better.

Again, I apologize for dropping this on the Commission's plate at the last minute so it appears; but the fact is that we didn't know about this, the association members did not receive notice of this except through the newspaper and that's just not right.

<u>Chairman Arroyo</u> okay. I want to touch on a couple of issues. The notice that you're talking about are you talking about public notice that is required by law to be sent to individuals within a certain distance from the property in question?

<u>Todd Thompson</u> yes; two levels of notice. One is the notice that is required at the organizational level to the Bylaws of the organization. There's no showing that that's been complied with in the packet that was submitted. There was also no showing that the 500-feet radius requirement has been satisfied. So on its face, it doesn't show that that's been done. Maybe it was done. Mr. Kasperbauer certainly didn't catch wind of it, and I can assure you that from having represented him and his companies in the past that he would have known about this if he had received notice.

<u>Chairman Arroyo</u> I'd like to address that to the Chief Planner. Is there a requirement for notice and if there is, was that requirement met.

<u>Marvin Aguilar (Chief Planner)</u> in compared to ... with administrative requirements for the Guam Land Use Commission it's notice to the newspaper and it depends on notification through their Bylaws.

<u>Chairman Arroyo</u> so the only notice required for this particular application is notice in the newspaper.

Marvin Aguilar yes sir.

Chairman Arroyo no individual letters sent.

Marvin Aguilar within 500-feet, no.

<u>Chairman Arroyo</u> Kristan, can you confirm that?

Kristan Finney (Legal Counsel) not instantly, but I can look into it.

<u>Chairman Arroyo</u> do you have anything that shows that for this particular application notice must be sent?

<u>Todd Thompson</u> well...21GCA 61303 B&C is the 500-feet notice and it's a ... basically an amendment of a site plan. What this would effectuate would be a site plan amendment by going back four years and proving notice of action which expired, kaput, on its terms after a year. Essentially the Commission is taking up a new action item which effectuates the change that triggers the statute.

<u>Chairman Arroyo</u> okay, I see where you're coming from. So, the second thing I wanted to hit on is your statement that because the supplementary final public report wasn't filed then the Notice of Action has expired and now ceases to exist with full force and effect?

<u>Todd Thompson</u> yes Mr. Chairman. By its terms, actually the most prominent part of the Notice of Action it's the part here ... this is recorded document 840122; it says important notice read carefully. Then it goes on pursuant to Section 5 of the Executive Order 96-26, the applicant must apply for and receive building or grading permit for the improved project within one year of the date of recordation of this Notice of Action otherwise the approval of the project as granted by the Commission shall expire.

So, expiry is a legal term that basically it's like a void of an issue, it never existed, it doesn't exist. So in order to redo it you can't just retread it like a tire it has to be done afresh through process, through notice.

<u>Chairman Arroyo</u> what kind of work was required to convert the (I believe) it was a 102 hotel units into the multifamily residential units. What kind of work was required? I believe there was some commercial spaces too that were ... what kind of work was required for that?

<u>Todd Thompson</u> if I could defer to Mr. Kasperbauer I think he could better illuminate that issue.

Steven Kasperbauer I'll start back at your requirement for notice. The Homeowners Association says that it requires all homeowners to be notified of a meeting. The Homeowners Association has different percentages of approval for certain types of activity. However, the Homeowners Association it does say that if there are any applicable laws that require more than that we have to follow the law which is obvious. So, if you look in these reports they always talk about a percent of how many of the ownership that agree with the project. In the past, this case has been brought to Court and probably a million and a half dollars spent on this issue in which every case the minority owner prevailed which we have settlement agreements to produce to prove that. In addition, we also have the fact that the minority owners were vindicated through a Court action by Judge Lamorena that put the entire operation into receivership all under Cho's management okay.

The issue at stake here is many things. We should at least be given notice of something going to happen whether we like it or not. And if it's within the terms of the Homeowners Association where if we disagree but the majority can move with it, so be it, the due process is there. But, we have also cited in the past and in these meetings in 2008 and 2004 and prior that the Guam law requires here, it says, a hundred percent unanimous consent to make certain changes.

Now, I have to tell you that at one time this was mixed condo/hotel but it wasn't it wasn't termed out how many units would be hotel. That was something that was delayed through the ownership of the Japanese Hibari. This is back in the nineties. And as you can see, a 1997 replacement horizontal declaration of replacement for horizontal property regime took all the way to 2005 to be recorded be cause it was complex. What had happened is they started mixing the number of condos and hotels scatteredly (sic) and to finally get the new replacement HPR which the Cho group and the former owners sued me to get was the one hundred and two (102) units to meet the parking requirements because they had built additional buildings on top of the place. And actually the bell had rung. You cannot ... you couldn't get another building on the top and that means you reduce the original amount of parking which in today's application they're saying will be more parking than existed when we opened in the beginning. It's impossible. There's buildings in the way. Okay. We've actually had Tanaguchi, Ruth and Andy Laguana come out, noted, trustworthy architects and contractors who have given reports to this Commission that the number of parking lots do not exist that match these reports. To make them exist what has happened is they had re-striped the lots in the past to shrink em (sic), but that doesn't meet the requirements. So, we move on today. Where we at?

<u>Chairman Arroyo</u> I'm sorry, could I just ask a quick question. When you say "shrink" are the size of the parking lot sub-standard.

Steven Kasperbauer correct. So, the only way they could do that ... so at that time what they did is they started striping parking spaces which I have pictures of and documents; trust me there's about five pounds of documents in my office which is a condensed version. I have been a victim of this for thirty years and this November will be my thirtieth year on this property okay. So what they did is they just said well we'll fix that. We'll just erase that line and move it closer. And that's why you can see these parking arrangements somehow matching. There's no way you could get a hundred and fifty-eight (158) units, the original variance, only allowed a thirty-five percent overage for a hundred and thirty-eight (138) units in a seventeen (17) storey building! None of this four hundred square feet stuff has to do with these official units.

In the Minutes that I was reading from 2012; I would have been there if I would have been notified. I didn't catch another meeting where I've looked for Minutes but we can't seem to produce the Minutes that had David Mair our attorney in here and also it had a testimony of Dan Swavely and Lindy Swavely; I can't find it. But where ... it's very similar to the 2008 Minutes where after we presented all of these documents; if you read in your 2008 Minutes, the Cho group who by the way, I want to know if the Cho group's if Brooks is their personal attorney because that's been the case or is he the Association attorney which is already been proved in Court to be wrong. Okay. We need an association attorney and I don't know if we have one here today. So, what happened in that case is (umm) we just couldn't move forward, and we tangled up all the properties and their titles into a situation where we couldn't even get title insurance. I'd tell you if you had, if they had committed to go forward with the construction of these twenty units and make these other issues, we would be back in the same place is where we were in 2004. Why this came to Court was not only rights of property owners and then to be notified, but

there was a time period for about five years where nobody could buy anything officially and get title insurance to a property there! That's disturbing!

So today, (umm) if you look at the 2008 Minutes as we had discussions about the 400 square feet and building the units, in the end they retracted and those extra units that are built there if you look in there one of the Commissioners said what are you going to do about that? Because he said what is this third building that was never there. And they said that we will demolish the six units. It's right in the notes. We turn it into commercial storage space. We will not use it for that purpose. Today you can still see a sign in front of the building that says long term lease. It's been there forever. In 2008 while they were applying for this ... they're calling it an amendment to the replacement. If you had to get a replacement to do what they're wanting to do now you'll have to get a replacement not an amendment for this one. And that was already established there as well. They have been renting condos in the hotel portion, and one of the Commissioners asked can you prove to me that you're paying hotel occupancy tax. Well in 2008, Mr. Cho states right in your Minutes we've already been renting these as condos for a long time ABC shouldn't be bothered about that. We stop doing the hotel. He said that while he was under a hotel zone. These are in your documents if you just read em (sic).

In 2012, in these Minutes, you know our issue is that ah...the Department of Land Management top staff kept trying to reiterate what the law is and if I read through the documents, Mr. Swavely who by the way I have some documents right here represented us against Cho on these things! If I give you this document you see on the very front that Mr. Swavely is responsible for helping us litigate and win our settlement in the 2005 agreement. And in there it talks about notice not being given. It talks about parking, it talks about all these things. We worked with him for many years. And for four months he worked with us to provide consultation through David Mair's office and myself to make sure that this Commission who he is very familiar with knew the process. And as a result of his consultation there and those notes we prevailed. Now 2012 he didn't stand on the facts, he kept saying let's not look back at the past, let's not pick this issue up, if you read it, it's complicated, and in the very end he said, I'm willing to take this risk. But he doesn't have one penny of risk! Those minority homeowners may lose proper title insurance. My property value obviously diminish which the Guam law requires if it's going to diminish your property value you have to a hundred percent approval.

Obviously I'm going to show you a picture. This is the Alupang Beach Club at the old Panciteria (sp?) where that building stands. We've been there before it stood. Of course we wanted a hotel/condo! It's a complimentary building. Now, they begged us to make it that and organize into the 102 rooms because they couldn't fit the parking! There's no way on that tiny one way street with that quiet peaceful neighborhood that you could fit a 158 condos and their residents. And I want to remind you that when we minimized it to 38 condos that was because we were already having parking issues. Today, we have three military officers in one condo and they may have three boyfriends or girlfriends with six cars parking for every unit! It's just a mad house a lot of times.

Sorry I had to vent a little bit there, but this has been a hard long process. Monies we've received in settlement only barely recovered a portion of our legal cost. And this is unfair to an owner. We're supposed to have quiet enjoyment. You know when we took this to the community and in that document you see even Dan Swavely said that you need to first to the homeowners association, then to the 500-foot radius and then to the Mayor's Office. And only to that after that which he agreed with our, his recommendations that we wrote you could bring it to the TLUC and it also says that certain things require a variance first before you get here. And so you have that document.

<u>Todd Thompson</u> if I can just try to put a cap on what Mr. Kasperbauer has said, and obviously he's very worked up about this. It's very personal to him. It's been part of his life for the last thirty years. But from a lawyer's standpoint in the clinical context I just say that there's enough in what he has said, I think what we presented in our letter to say, timeout, let's just think before we strike here because this is not simply taking what was done in 2012 and putting rubberstamp on it. We think that that expired of its terms and it needs a fresh look. There's been change in four years. A lot of factors that Mr. Kasperbauer discussed weren't taken into consideration at the earlier level because there wasn't notice. And all they ask for is notice and the opportunity to be heard and a chance to do this the right way.

<u>Chairman Arroyo</u> so you're request to us is just to hold off on any decision with respect to this application today.

Todd Thompson yes, yes Mr. Chairman.

Chairman Arroyo and what will that accomplish?

<u>Todd Thompson</u> well, we'll have the full participation of people like Mr. Kasperbauer, the other minority owners, community members; everyone can have a chance to put their say in about it. And if in fact the Commission at that time after hearing everyone determines that there is no just cause to hinder the project further and to move forward that's fine. We'll have to accept to that and live with it.

Chairman Arroyo but wouldn't we be doing that today?

<u>Steven Kasperbauer</u> we could do that today. May I? It's been turned down. They actually said that we agree with you. We're not going to do this anymore. We're going to take those units and demolish them. In the 2008 Minutes you can read it, it says we will demolish them Terry Brooks says that. And he can say that be cause those units are owned by the owner of those units but not owners association so they could do whatever they want inside their walls. He also said he'd turn it into commercial storage. And then they took it off the September 2008 agenda and said it's something we don't want to deal with right now.

By the way, this application here that was submitted is full of errors. It's talking about a 2008 TPC (umm) requirement and the TPC didn't exist it should be 1998 it's a typo, but it's also giving GLUC Regular Minutes

credit to Mr. Richard Rosario who is very respected that he is a guarantor of this density formula. When you read the very Minutes of 2012 he kept saying no 1250 per unit. They finally settled on the 1250. I would have been here if I would have been noticed. And they go onto say they're going to convert commercial units into these 1250 square foot unit. Now, what's the problem with that? They added up the entire commercial space for the whole building and divided it by 1250 and guess how much was leftover. If you look at your Minutes it says 2000 right? So they said they'll leave it. And what is the 2000? They said Alupang Beach Club. Okay, I wasn't here. How big is Alupang Beach Club? 4000! Where am I going to get 2000 square feet to operate?! It's really sad. I mean you can't just do these. These buildings have different sizes. Henry has a lot of experience in this.

Henry Simpson Steve asked me to join.

Chairman Arroyo I'm sorry Henry, can you state your name for the record.

Henry Simpson I was the original owner and building of the Alupang Beach Tower. I was the managing general partner when we built it. The Hibari Corporation was the Japanese company that we worked together with. Everything went really well in the beginning when things are going well and the economy is good. We all kind of had a crash landing after the bubble burst in 1992, 1993. And I at that point decided to pull out my part of it and sell my shares to Steve who has invested years and years of his time, effort, money into building this successful business at the Alupang Beach Club was. And so, in the process of getting the building approved (you know) we were limited to that 1250. And with our original land I had an auto dealership there. With that original land I was really working hard on being able to get as many units as possible. The only reason that we got the, up to 138 units was that when the government widened Marine Drive, Marine Corps Drive, they created an adverse condemnation (sic) of about four commercial units along there. There was a little jewelry store, there was a Lieng's Restaurant, there was the funeral parlor and also another one other commercial space. But we were also dealing with a piece of property that Charlie Corn had appropriated about 2,000 square feet of government property out into the bay. He had piled rocks up and backfilled it, and everybody knows what the Panciteria looked like. So, our trade with the government was let us use this 2,000 square feet that Charlie Corn had built out there in return we'll buy these commercial spaces over here, approximately the same size, and we'll build a public park on it so that people have access to the beach right because people didn't have access to the beach there at all. We'll clean up the beach. We'll do all the things that are necessary and have everything approved. So it was a win, win situation for everybody. We had the space we needed to build and then we're really happy to build a park there. In relation to building the park and going that extra mile on doing that to make it work, that's when we got thirty-five (35) percent over allowance from 101 or 102 units to a 138.

The 400, my recollection is, 400 feet came into when we were dealing with the first floor only because the first floor only was the commercial space. We were going to have a restaurant, we were going to have a couple of other shops like you normally would in a, in a hotel setting; but we were wrestling with how big that could be, how many could we have. We trade those to, let's

say the jewelry shop owner that had the other piece of property, and so that's where, to me, my recollection, we were dealing with 400 square feet units because everything above that was the, was the 1250. And so that's again, my recollection, the only place that the 400 feet came into. And so, of course, the commercial space as required for parking, parking was always, was always kind of a nightmare and we didn't really plan on a hotel hotel as such. We were modeling this building after the Waikiki Beach Tower basically how they had operated. They had built a really beautiful condominium, but they had so many outside owners from Japan, from the States, from Canada, from various places that only use their units once or twice a year. And so they put together a pool and they rented those out. And so they have management company come in and manage those units for the owner. And so the owner would say I'm going to come in and stay in my unit for a month they wouldn't rent it out they would make sure it was clean it was acceptable. The rest of the year that owner would get a check for the rental income and this was the enticement for Japanese investors to buy at that time. Unfortunately, that didn't happen. The bubble burst. There weren't the buyers that we thought that were going to be. We have a few individual owners and so...again the major stockholder Hibari decides we want to run it as a hotel. And that's when the eighty or whatever the final unit numbers of hotels come in. They wanted to run it as a hotel. That's where the extra space comes in for a restaurant. That's when the extra space comes in for people to ... so they can have their staff live there without having their take of actual rental units. And so that was kind of like the next step. They were going to invest in this for a long time as a hotel and still sell a few of the condominiums. So, they did that. And so, it did get complicated. That complicated it and that's what my understanding was that they had their disagreement over was how was that going to come out without affecting Steve's parking. And a ... but he wanted that to happen; Steve wanted that to happen because that's a 100 hotel rooms there that have people coming in there every couple of days that are going to use the beach, that are going to use his facilities or they're going to use the restaurants inside the building. It looked a good win, win situation for everybody. Unfortunately, it didn't work out that way. It's been sold. But this is now kinda gets us to where we are today. I don't think you can say that these rooms should be calculated on 400 square feet.

I think we were very fortunate and did a lot of work to get the, to get the, to get the 34 percent increase to the 138 we did already and I kinda think that that putting anymore in there is really gonna over do it my personal opinion, but I know for sure it would diminish having done the business together with for many years that adding those units in there would diminish his value of the, of the piece that he owns. He actually does own the fee simple portion of that because the ... it's like when we were getting ready to trade the property, not all the owners would sell their property. We had one lady that owned a piece of property that rented it out to a jet ski business. That jet ski business paid her rent. He had a thirty five or forty year lease with them and so we had to buy out his lease and then we had to provide her with a commercial space that generated the same income for next thirty-five years. And so it got very complicated.

That's where Steve came into ... he and I as partners, came into ownership of that long term lease. So it was very difficult to do to put all that together. And umm it's working out but as the majority interest changes the majority interest his own interest change on how he wants to do business you know it's affecting him ... having being Really heavily involved in this whole

thing is very, very, very difficult to be the local partner in a deal where you don't really have control. I feel bad for him because it was I calling (sic) ... I said hey did you know you're having a meeting? He said, no nobody told me. I saw it ... it wasn't in the PDN it was in the Post. They're having a meeting and it's about your horizontal property regime because I've been here at other meetings with him and I thought they were regular meetings but I think they were technical meetings because we can't find any ah, any ah...Minutes of any of those meetings that I came to. I was here, David Mair, the other people here, and it was a meeting just about like this but there's no Minutes of it. And it that last we went to Mr. Joe said Mr. Lather said you guys should get together and work this out. Come to some arrangement. And so my understanding is they started to try on some arrangement and Mr. Cho said never mind I don't want to do it anymore. And that's the last we knew! The last we knew. This December 12 one he didn't get any notice. I didn't see it in the paper so I didn't go. And you know it's really hard to be that local partner when things happen that you don't know about. And so I recommend that you take some time to really understand what's going on here because it's not what seems like at face value.

Steven Kasperbauer I'd like to recommend that you don't have any approval today. We've been going over this in Court with your Land Use Commission for the last, almost twenty five years. And prior to 2012 when we got everybody really up to speed coz (sic) we had a settlement where we would just try to respect each other's businesses. But the respect has been gone since the day it was signed. Okay. But honestly, is it so difficult to wake up everyday and spend a thousand dollars on legal fees and that's how they beat you okay. You really have to have so much ammo to go collect the legal fees back. Now the difference here, and this group has been scolded many times is they're always going to ask where is the attorney for the homeowners association. In otherwords, if a majority owner controls the vote and let's say it's 51 percent, there's 49 out of a 100 that don't and does what they want and does it wrong, will that homeowner who is in charge of the association sue himself for remedy. I mean the answer is in the question right. No, and that's what the Court decided. They said look that's why Lamorena put it into receivership. They said you just can't do this. And that's why you're not finding any Minutes, any notices, no roster, no roll call. You'll constantly see now in the recent presentation having more than 75 percent, having more than this percent. But the law is clear, if you change the value, if you do certain things you need a hundred percent. And what was their challenge to me before? You're not an owner. I said, listen, we have the lease that says during this time I have every right and privilege as an owner. The Court has upheld it. The receiver upheld it. The settlement proved it. But today, they're playing on the fact that you don't know all the history, and I feel bad as a citizen that you would allow this forum to be trusted and that kind of half information be offered in the past. But if you go down your 2000 (sic) Minutes, the representative the attorney for that group immediately (undecipherable) back and say, we're just going to demolish, those are the words, the six units we're going to turn it to commercial storage. You understand? They were scared that this thing was gonna get loose. But by this concept still of majority rules they've been able to just you know blatantly come in here and say that's enough to get things done besides the law. Thank you.

<u>Chairman Arroyo</u> quick question though. Between...let's say we hold off on making a decision today as you were asking; between now and whenever we make a decision, what's going to happen? Are you planning to meet with the rest of the homeowners association to iron these issues out? Or is there anything else going on?

<u>Todd Thompson</u> well, the lines of communication are open and we are certainly willing to consider that. But, no one has approached....I mean, again, I can't stress enough that the only reason why we're here today, the only reason why we know about this is the publish notice in the newspaper. There was no attempts to work anything out with Mr. Kasperbauer. They just pretend that if you're not one of the majority groups you don't exist.

<u>Chairman Arroyo</u> I guess the thing I'm driving at is we can't wait forever. At some point in time we need to make a decision, and if it were in your court at one time would that take place and what would you feel comfortable with.

<u>Todd Thompson</u> just let the notice process run its course that's all we're really asking. Just a chance to to get timely notice to the owners association, timely notice of the next proceeding of this Commission so everybody like Mr. Kasperbauer who has a position to state can state it, and then the Commission makes its decision. But to treat a four year old a ... Notice of Action that expire on its own terms as something you can just rubberstamp we think is wrong based on the things that you heard today. And I know you didn't come here to hear this all today, but we think it's important. This is really unusual. And who caused the delay here? They sat on this four years, and they can't really explain why.

Steven Kasperbauer can I just say this. Here's the challenge. We can sit back there and agree on something but will still be illegal and that's what happened in the past. They agree amongst themselves and maybe some other owners and they move forward on that basis wherever that 75 percent they said and nobody could get title insurance. And you can search back in the records ... and here's what happened is we understood that the Hibari group was going to sell to the Cho group. So, David Mair and I actually called Attorney Brooks to the office and we said. hey, can you just hold off we're going to fix all this so we never get to bother you guys here, ever. Take about six months, we're getting real close but they turned down the offer. They actually joined them and joined in in suing us. And during that process what finally got their attention in didn't matter what wrong was wrong was one the receivership and two the fact that Takagi and Associates refused to give them title insurance. So then they went to Security Title and then they went I think Pacific Title and they had to get a new replacement HPR okay. I'm going to tell you right now from the experience this body has had and ours over the last twenty years, you can't make an amendment....if you needed a replacement HRP to turn a condo to a hotel, you're going to need a replacement HPR to turn it from a hotel to a condo! Not an amendment. That's like making an amendment to Hyatt to turn it into condos. It's not going to happen. This is not an amendment issue. This is what was brought up in the last meeting, in the last meeting, whenever we finally figured there was one and it was always wiggled around but it was never contested. And it has never been contested and won legally. You need a

replacement HPR. And I'm worried. If I was to join that motion I would jeopardize the title of what I have on the property myself.

Chairman Arroyo thank you. Any questions? Comments?

Commissioner Limtiaco I have a couple of comments. I don't know if it was Mr. Thompson or Mr. Kasperbauer, but I'm not the sole one who have been here for the last meeting. It's also Ms. Bathan and she's absent today. So just that you know there are some people here who were at the last meeting or the 2012 meeting so that's important as far as history goes and figuring out what we actually discussed four years ago.

Mr. Chair, what I'm concerned about is we've sat here now about 15 to 20 minutes of listening to Messrs. Thompson, Kasperbauer and Simpson discussing some of the points and history, but definitely some of the points that were made in his April 13, 2016 letter, and I believe that some of issues we have, we have already discussed. For example, notice as far as the GLUC is concerned for anything regarding Horizontal Property Regime, I think that we discussed that it's not in (undecipherable), but they bring up a good point. Also under HPR about physical changes to the plan; physical changes to the site plan does require notice, and I believe it's in either Section 45108. And so that brings up a question that I would have to go back to the Chief Planner and to our other Planning Staff to ask whether or not there has been proof of notice for that. So, it's very interesting because on one hand we have the over-arching HPR issue where the law says it's ... you can change, you can submit reports at fifty percent majority. So I did compare Section 45102 in the law to the two declarations that were made that we have in our packet and verbatim. The declaration, the applicant's declaration and the law are verbatim. So, clearly the applicant cut and pasted...but it's 45108 which changes to this structure that does require unanimous votes. So that's interesting and I think it's a play we need to explore, we can't explore it right now. We do need some time. From a perspective of a Commissioner who was here in 2012 who was very active in the calculations that we went through to the point of pure confusion. I must say that this is a very, very complex issue, and depending on who is explaining it you're not ... you can get lost. So, we did go through everything and I don't ever recall hearing about some of the points and history; for example about ABC Inc. versus Hibari the issue with receivership, how that came out, what the Court said, whether the Court interpreted, chose to interpret any portions of the (inaudible/undecipherable) of the GLUC follows or applies. This was a civil case. I don't know if that has been explored; a second issue that I would like to explore. So right now, based on the facts I will tell you I'm not prepared to make a decision today. Not based on what we just heard.

<u>Chairman Arroyo</u> well that poses us with a problem because there's only four of us and we need four to do the motion or at least to accept the first supplementary final public report.

Any other questions or comments? [None noted] Thank you. I'd like to invite the applicant to come back to the table.

Chairman Arroyo okay it seems we find ourselves back in 2008.

Terry Brooks if I can just go real quick, I'm going to let Dan do most of the explaining here; but, everything prior to 2008 should be water under bridge at this point. The suit was settled. Mr. Kasperbauer was paid a substantial amount of money and then we got into 2008, and as Ms. Limtiaco knows ... 2012, we've gone through a lot of these issues. They've been addressed by the prior Commission. With respect to the one issue the replacement versus an amendment. The replacement HPR that was passed substantially changed the entire footprint of the ... it went from a condo; they added a parking structure, they added substantial amount of construction to the existing unit. This application does not in any way change the outward footprint, the structure; it has to do merely with the interpretation of internal (inaudible/excess noise) and that's basically it. So, that's why this is an amendment as opposed to having a replacement. The replacement was absolutely necessary because it was a different structure; this is the same structure.

<u>Dan Swavely</u> yeah, here's how I see it real quickly. I also was part of all those previous meetings. And I remember the torturous deliberation that we went through, Torturous, What you just heard was frankly bits and pieces from one side of the interest. And the only way for you all to be brought up to date is if we re-hash it all again. We never came here to go back to that point. We just came here asking you to please validate something which was previously approved. Not to go through everything. Now, it's obvious that my good friends of forty years, Steve and Henry are unhappy being a minority member. They were unhappy with that decision in 2012 by your predecessors. And maybe because the Chos' slipped and didn't file the public report this looks like another chance of rewriting history. We don't think it is. We think that history is finished. We're just asking you to say we agree with what was previously approved. There haven't been any changes. Let's get on with it. This group knows full well how to exercise their redress through other places other than this Commission, and they probably will. But for today, we would just like you to say, alright. Let's not go to Downtown Abby again here, please just revalidate what your predecessor previously approved. And then we can work with them or not or we'll work something out as neighbors should, should work it out. But, it really should happen here before the Commission. We went through that once.

<u>Commissioner Oh</u> I have a quick question. Attorney Brooks, you were mentioning about substantial structural improvements when the replacement was proposed. Can you give a little bit more detail about that.

<u>Terry Brooks</u> there was, again this was before me. When that was approved they added the parking structure, that parking structure the two/three parking structure that exists now. It was not there when the original unit was built. So, they had a replacement HPR of that changed the footprint of the building and that's why that was a replacement HPR. Again, we're not changing the footprint.

<u>Commissioner Oh</u> this is just from my own recollection, but correct me if I'm wrong. The replacement was passed/approved in 2004. My recollection was that that parking structure was previously existing.

<u>Terry Brooks</u> yes, it was probably 1998 when ... if you look back everybody had signed off on the changes including Mr. Kasperbauer to that replacement. But for whatever reason it wasn't filed until 2004 when Hibari tried to sell to Mr. Cho. So, that precipitated the loss.

<u>Commissioner Oh</u> what I'm trying to get across is that you're saying the replacement was necessary due to major structural improvements. And based on the fact that it was approved the replacement was approved in 2004. I'm saying there were no real structural improvement at that time in 2004.

<u>Terry Brooks</u> well, they were done. They had already been done. But, 2004 replacement documented the changes that had been done six, seven years earlier.

Commissioner Oh so, do you know when that parking structure was built?

Terry Brooks it was before 2004.

<u>Commissioner Oh</u> I'm trying to see if the replacement was a necessity because of, because of the fact that the operation of the, the nature of the building was going to change from a condo to a hotel or was it triggered because of the new structure. That's what I'm trying to get at.

<u>Terry Brooks</u> I believe it was because of the new structure, but then again I wasn't involved in that.

<u>Dan Swavely</u> so, we hope that you will see that we're just asking for what I thought was kind of simple. Just please revalidate your predecessors approval of that Notice of Action.

<u>Chairman Arroyo</u> any other questions or comments.

<u>Vice Chairman Cruz</u> I guess this is to both parties. Regardless of whatever we can't make a decision now as you heard. But as we make that decision down the line would you guys go back to Court again just regardless of what the decision comes out?

<u>Terry Brooks</u> again, I wasn't really involved in the prior years. That was mostly the Attorney for Hibari, Joyce Tang and Mr. Kasperbauer's Attorney. Again, that just had to do with the sale of the unit.

<u>Vice Chairman Cruz</u> it's been put on the table that somebody dropped the ball period; you know, no ands, ors or buts about it. Somebody just dropped the ball. I'm not saying your part or whoever's part of it. I feel that whatever decision is going to be brought up you guys are still going to come back or you guys go to Court or whatever. So the judge said before can you guys get together and settle this thing?

Terry Brooks well, we'll be open to discussion certainly.

<u>Dan Swavely</u> I work with Mr. Cho almost everyday because I'm involved with all his projects. And I can certainly vet to him the (undecipherable) of the situation here and the need to do what we can do to make things better. But at the end day, we need the public report.

Chairman Arroyo just to establish, who you're representing Terry ---

Terry Brooks I represent the Chos'.

<u>Chairman Arroyo</u> is there anybody here representing the homeowners association. Is that you Dan?

<u>Dan Swavely</u> no, it is not. I represent the Chos' as well.

<u>Commissioner Limtiaco</u> I'm sorry. I thought, I could have sworn...it says here Tab 4; it says that both Mr. Brooks and Mr. Swavely represent Mrs. Cho...Mrs. Min Cho, Mrs. Hee Cho (obvioulsy there's a typo there too because it says husband and wife) and the Alupang Beach Tower Homeowners Association. So, are you saying that you are not the Legal Counsel for the Association or are you saying ---

<u>Terry Brooks</u> they authorized us to appear here. That was just a document that we were told that we should file so that we could appear here before you today.

Commissioner Limtiaco but are you ---

Terry Brooks but I represent the Chos'.

<u>Commissioner Limitaco</u> are either of you representing the Alupang Beach Tower Homeowner Association?

Dan Swavely I do not; I just represent Mr. Cho.

<u>Commissioner Limtiaco</u> and who owns ... oh, I see it. We have the association and then we have the majority owners. I think we need to iron this out not in this hearing. That's my thoughts. I don't know how you feel.

<u>Chairman Arroyo</u> what kind ... I'm sorry, can you just repeat earlier what you said the things you wanted to be consider or considered...let's just put it in the Minutes.

It doesn't appear, I mean there's only four of us here today, and it takes four of us to approve any action. And it doesn't appear as though we're going to get four because one of the Commissioner members has already indicated and a second one has indicated that they're not ready at this point in time to make a decision. So, I think what we'll probably end up doing is take some time, reconsider, continue the hearing of your application and then schedule a

date....Marvin, Cris how are we on ... to bring this application back on the agenda? How are we on space on future agendas to do this?

Marvin Aguilar I think the 28th maybe full already.

Chairman Arroyo so it would be the first meeting of May?

Marvin Aguilar yes, May 12th.

Chairman Arroyo so we'll plan for May 12. We'll come back and look at this again. Thank you.

Dan Swavely okay sure...thank you.

Chairman Arroyo did you have something you wanted to say?

<u>Steven Kasperbauer</u> I did. You my question is that we've been going through this process and there are new members. I wasn't at the last meeting because I wasn't notified; well of course, Cho group doesn't have to notify me the homeowners association does. The homeowners association ... you've been basically duped to think that the homeowners association has no one representing here!

<u>Vice Chairman Cruz</u> excuse me. Let me just get one clarification. By saying that you were not given the opportunity to know about ... is it this hearing or what meetings you guys have got between yourselves.

Steven Kasperbauer well there's two things. I would have to say you've given the opportunity through your public notice in the newspaper should I be on island or here. But the first process is for the homeowners association to notify me whether you like it or not that this is going to happen and the community. What you guys have been entertaining is that you believe this was a homeowners association and that's why we have to keep coming back. That's why they don't state it ... but in these documents they're putting here Alupang Beach Tower condominiums. These are only actions that can be represented by the homeowners association. So we went through this when Joyce Tang was there and we proved a point in Court. Jay Arriola's group represented the homeowners association, but they could not overcome the 100 percent unanimous. And then they hired Cohen. And then now I don't even if it's Jim (undecipherable) but we haven't had a homeowner's association meeting to my knowledge, with notice, according to the Bylaws in eight years or nine years! The last meeting that we had that I was able to attend or my wife attended, Mr. Cho actually told her to shut up you're a minority.

<u>Chairman Arroyo</u> okay, Steve...I understand and I hear your frustration, but there's really nothing that we could do here. You've heard today that we are putting them back on the agenda for May 12th ---

<u>Steven Kasperbauer</u> (interjecting) but how do you put them back on the agenda if the association hasn't met?!

<u>Chairman Arroyo</u> I'm going to say something further. It appears that Mr. Terry Brooks who represents Mr. Cho and Dan Swavely who also represents Mr. Cho have indicated that lines of communication are open. So, I'll leave that in your court because we can't settle that issue here. That is something that has to be done outside of here. Okay? So, we'll be back May 12th if everything works out to talk about this again.

<u>Chairman Arroyo</u> okay, let's move on to the next item on the agenda --- I'm going to have to...my voice...turn the chair over to the Vice Chair. Let's take a five minute recess.

[Commission takes a recess at 3:00 p.m. and reconvenes at 3:10 p.m.]

<u>Vice Chairman Cruz</u> back to our meeting. I would like to request to make a change on the agenda by moving Item C, Horizontal Property Regime ahead of the others. Does anybody have any questions to that? [No objections noted from the Commission]

So, we're now on C ---

Horizontal Property Regime

C. The Applicant, Karen Young S. Kim (Developer) represented by Melinda S. Swavely, Esp.; requests issuance of its Seventh Supplemental Public Report (Happy Condo) located on Lot 10, Block 1, in the Municipality of Tamuning, HPR No.160, under Application No. 2008-78G. Case Planner: Celine Cruz

<u>Vice Chairman Cruz</u> have you guys have a chance to read? You have any questions? [None noted] If not, I'll go to Case Planner Celine --- I'm sorry, in front of us is Melinda go for it.

<u>Melinda Swavely</u> thank you Commissioners. Yes, this is for the seventh supplementary final report. We have two units which have not been sold out of four. They are not actively trying to sell them because they are waiting for the market prices to go up. So, I am making a periodic visit every thirteen months. I may be back here again in thirteen months. We would just ask for the issuance of the seventh supplementary public report.

Vice Chairman Cruz does anybody have any questions.

<u>Commissioner Limitaco</u> I want to point something out --- as I was reading the history of the prior issue which is Alupang Beach Tower; it's funny how at the sametime you folks are actually coming at the sametime, several years apart to discuss Happy Condo and Alupang.

Melinda Swavely oh is that right?

<u>Commissioner Limtiaco</u> yes, so you must have moments of déjà vu all the time as you are sitting back there.

Vice Chairman Cruz Celine, you want to do your report?

<u>Celine Cruz (Case Planner)</u> okay thank you. I'll just be very brief. Again, the application is 2008-78G. [Ms. Cruz continues to summarize her supplemental staff report to include a brief history of the application, analysis/discussion and recommendation. For full content/context, please refer to Attachment C.]

[Attachment C - Supplemental Staff report dated April 1, 2016]

<u>Commissioner Limitaco</u> Celine, has the applicant ever been late in submitting an update of their reports?

Celine Cruz no.

Commissioner Limtiaco thank you.

<u>Celine Cruz</u>! do want to note though that there was a time when the public report it was through their request for renewal that we realized that the previous public report was not ever recorded.

Commissioner Limtiaco I see. Is that why there's an overlap of the ---

Melinda Swavely there was something ... you know it's been awhile. There was a second amended second supplementary report, but that's 2011. I'm really, but I don't remember exactly why we had to do that. I think there may have been, at that time, I think that we may have, because you were saying we weren't late; but I think we were late, I think that I had been told by the client that they were selling the units or had sold the units. My memory might be wrong, and so we didn't file and then we found out it they hadn't been sold. I think they had planned on selling them. Something fell through and then we filed. So, I do think that there was that time when we were late back in 2011.

Vice Chairman Cruz does any other Commissioner have any question? [None noted]

<u>Melinda Swavely</u> actually that does fair out because if you look at Mr. Mafnas' signature, it is in November 2012 and the other...the third is then November 2012 when it was initially issued so I think that's what happened.

Commissioner Limtiaco right; I think remember having to go back and we discussed that.

<u>Vice Chairman Cruz</u> we'll open for public comment. Anybody? So, we'll close for public comment. What is the will of the Commission?

<u>Commissioner Limitaco</u> well, do we have anything to discuss? Okay then. I would like to make a motion.

I move for the Commission to accept and issue the seventh supplementary final public report under Application No. 2008-78G, under Registration No. 160 with an expiration date of May 14, 2017. I'm sorry Mr. Vice Chair, may I go ahead and revise my motion.

Vice Chairman Cruz please do ---

<u>Commissioner Limtiaco</u> I recommend that the Commission issue the seventh supplementary final public report so that the developer can continue to sell the remaining two (2) condominium units, and pursuant to Section 45154, Chapter 45, Title 21, the issuance of the seventh supplementary final public report is a, will have an expiration date of May 14, 2017 in regard to Registration Number 160, Application No. 2008-78G.

Vice Chairman Cruz there's a motion on the floor, any second ---

Chairman Arroyo I'll second.

<u>Vice Chairman Cruz</u> motion by Commissioner Limtiaco, second by Chairman Arroyo; all in favor of the motion say "aye" [Chairman Arroyo, Vice Chair Cruz, Commissioners Limtiaco and Oh], all opposed say "nay."

[Motion passes unanimously; 4 ayes, 0 nay]

IV. New Business

Zone Change

A. The Applicant, Goodwind Development Corporation represented by Harry D. Gutierrez; request for zone change from "A" (Agricultural) to "M1" (Light Industrial) zone for the proposed construction of warehouses, office spaces and equipment parking, Lots 5236-8, 5326-12, 5326-14, 5326-4-1 and 5326-4-2-R1, in the Municipality of Dededo, under Application No. 2015-35. [Postponed from GLUC hearing of February 25, 2016] Case Planner: Penmer Gulac

<u>Pen Gulac (Case Planner)</u> summarizes the staff report to include purpose, facts, public hearing results, staff analysis/discussion, conclusion, and recommendation. [For full content/context of the staff report, please refer to Attachment A]

[Attachment A - Staff Report dated February 19, 2016]

Vice Chairman Cruz okay. The applicant ... please can you please identify

Harry Gutierrez I represent Goodwind Development. They're also the owners of Micronesia Mall. As for the concern of the public on the road, Goodwind will improve the road easement going in and realign it. Per Public Works...they would use that as their main entrance anyway so widening and improving it would be their benefit. The reason why I'm saying that is Federal Highway required to have a main entrance less 150-feet from another entrance. So, Goodwind...the neighbors per Mr. Gulac are also interested in rezoning their property and they're adjoining said properties that I'm mentioning right now. I have nothing else to say.

<u>Vice Chairman Cruz</u> okay, now we'll be open for public comments. Is there any public comments?

Public Comments [Seeing none, public comment was closed for this application.]

<u>Vice Chairman Cruz</u> the staff they did their presentation I guess the next thing we're going to do I just want to acknowledge that there's the presentation document presented to us in reference to this sharing the Notice of Rezone sign. Any questions?

<u>Commissioner Limitaco</u> Mr. Gutierrez, I just want to verify. The map (inaudible due to excess noise), but I noticed that there are a lot of the features that Mr. Gulac had noted to just be sure that these lots that you are talking about are not necessarily contiguous lots correct?

Harry Gutierrez can you repeat that?

Commissioner Limitaco are the lots contiguous? Are they right next to each other?

<u>Harry Gutierrez</u> yes, except for the other lots it's in the other side of the property. It's a small strip in front of the major lot that was agreed upon the settle with the other owners. You could see the strip in the property map fronting Route 3.

<u>Commissioner Limtiaco</u> right....there's a lot of issues here. Is there anysorry, let me rephrase that. There's an existing easement for the aviation fuel line that is, that touches Lot 5326-14 and it is, it appears along the property boundaries of 5326-12. Does the presence of that fuel line have any bearing on any uses that are permitted within an M1 zone that you are requesting?

Harry Gutierrez no. Most of those lines are all underground.

Commissioner Limtiaco whether it's underground or above ground just asking the question.

<u>Harry Gutierrez</u> no. During the ARC ... the Navy and the Air Force representative was there and had no objection. One condition on the military, if you notice on the large of -8 there's a....

Vice Chairman Cruz Mr. Gutierrez, can I ask a question. Is there any fuel line in those....

Harry Gutierrez way in the back, the back the rear part of the line, fuel line.

<u>Vice Chairman Cruz</u> there's existing fuel line.

Harry Gutierrez yes.

Marvin Aguilar (Chief Planner) if I may Mr. Vice Chair. The Government of Guam has these properties that being returned to original property owners. There is a challenge in trying to accommodate these existing military easements. Most recently, we've been trying to address the coterminous use (if I may) for a lot of times it's about crossing over these POL lines. So, yes there is a challenge, but there is open communication and we have been working with the military. And perhaps Mr. Borja can (you know) talk more about that. A recent case with the Chamorro Land Trust had worked with the Navy to try to allow the relocation or deletion of certain government easements to improve the use of property lands that was actually returned over or returned or exchanged if I'm not mistaken.

Michael Borja (Executive Secretary) well aside from the most obvious the military easement in this area is the petroleum pipeline which most of those pipes are underground but there's a current upgrade to the whole entire system. But what may not showing here but may show on the more in-depth maps of these areas there could include as well other utility easements that belong to United States government that have not been relinquished nor will they be relinquished. And movement of any of those easements, and in some cases there's communication easements is not an overnight process and it cannot be used and you cannot build a structure on any of those easements. And that's the disclaimer that everybody has to note before they can begin any construction. And that fuel pipeline cannot be used as an access point either.

Vice Chairman Cruz but it exists that's all.

Michael Borja correct. If you look at this one map, reserve for future 50-foot wide utility easements. So you've got something in here that's running almost parallel with the pipeline; there's another dotted line in there, and that is possibly that communication utility easement and it's ... it did pose a big problem for an individual. It's not an overnight thing to get it fixed. The Navy (you know) is willing to work with people, but it is a work in progress....major work progress to accomplish it. The big overriding thing is the requirement to do an environmental site, environmental impact statement.

Commissioner Oh so you're saying that the utility easement, the fuel easement is ----

<u>Michael Borja</u> that's like ...forget it, don't even think about; close to it, on top of it or using it as an access road. Even though now the pipes are underground and it's obviously a very wide 50-foot wide area and it's clear it cannot be used as road nor access to your...as the designated access. Now crossing over certain areas yeah that maybe permitted. But then again you have to

get clearances from the U.S. government. But it cannot be the basis for your access for cars to use that as their access to their lot.

Commissioner Oh I'm trying to think back. If you think about Shell NCS ---

<u>Michael Boria</u> they got permission. You have to get permission so that you can use it to crossover, but it's not a road to drive down. You can drive across this area; you'll see many people do, but it cannot be your legal access to a property.

<u>Vice Chairman Cruz</u> in the case of that NCS station, if you look at it the actually, the owner of the property owns all the way up towards the main road except that the shoreline passes over there. That's how they have the authority to use that.

<u>Marvin Aquilar</u> and when you see these returned lands subdivision maps the military is very clear that these easement lands do not go back to the original owner.

Vice Chairman Cruz easement cannot be returned, it will stay forever.

<u>Commissioner Oh</u> I have a quick question. I'm not really familiar with the area. I'm looking at Lot 5326-7 which right above 5326-8. Their frontage basically is part of this lot. So, the frontage is basically owned by Goodwind; I'm assuming their access if from the rear. Where is exactly does that connect ... is there currently access to the rear?

<u>Commissioner Limtiaco</u> Commissioner Oh, are you talking about the right-of-way that is between the ... so there is a main road and then a sliver that is owned by the applicant and then a smaller right-of-way and then the main lot?

Commissioner Oh yes, yes.

Commissioner Limtiaco yeah that's confusing too.

Michael Borja -4 ... 5326-4, the green the one that's highlighted in green ... I think there's a

<u>Harry Gutierrez</u> that's a military underground communication line. The last time I talked to them is they're trying to find out if that is used.

<u>Michael Borja</u> it is not and that's what I was referring to. We don't think it's in use, but they will not give it up and moving it is the process that is not an overnight process.

<u>Commissioner Limtiaco</u> so Mr. Gutierrez, if Lot 5326-5R/W which is that sliver of land located between the larger sliver of land that fronts Route 3 and between the larger -8 lot; if that is still owned by the federal government, has the applicant, your client, been in any communication to discuss permission to use it as a passage way or some other

Harry Gutierrez they don't have to use that 100-foot wide reserve easement. But, Government of Guam has already blacked out that area as a road going back to Swamp Road. We have access to the NC...Route 3. The -4 and -8 is divided by an underground communication system which is not in use by the military, but like Mr. Borja said the military is not going to give it up yet.

Michael Borja who owns Lot 5326-4?

Harry Gutierrez Goodwind.

<u>Michael Boria</u> okay, that's not part of the application to be rezoned right? Are they applying for that lot to be part of the

Harry Gutierrez yes it is part of that.

<u>Commissioner Limtiaco</u> well you know what, thank you Mr. Executive Secretary, you bring up a good point. So, according to (interrupted by Mr. Gutierrez)

Harry Gutierrez oh yeah the the -4 was divided into two lots.

Michael Borja oh, -1 and -2-R1 ---

<u>Commissioner Limtiaco</u> Mr. Gutierrez, the map, the map is has (let's see) it doesn't look like it's a recorded map unless it's not a copy of the recorded map; but the map that Frank Castro did that is titled Re-subdivision of survey map of Lot 5326-4, and it is ... there's a Land Management number; 13FY2011, oh yeah I'm sorry there's a recordation on it. So that indicates that the lot that is self is number 5326-4-1 and lot above it is -4-2 and the lot above that is -4-R2. However, in this report, in your application, it shows 4-1 and 4-2-R1. Now which is correct?

Harry Gutierrez that should have been -2 not 2-R1.

Commission Limtiaco okay.

Commissioner Oh so that's inclusive of 4-2 and 4-R2; so it's all three of those

Michael Borja yeah, there's -1, 4-2 and 4-R2.

Commissioner Limitaco was that the intent?

<u>Harry Gutierrez</u> that was the intent to purchase that. They had a hard time purchasing the lot in front because ...

<u>Commissioner Limtiaco</u> I'm sorry...I just need to clarify this. Because the application request, the application request includes Lot 5326-8. From what I look at and in reviewing your request it does not include 5326-7; is that owned by your client?

Harry Gutierrez no, that's owned by the Benavente family.

<u>Commissioner Limtiaco</u> but the three smaller lots that front Route 3, specifically Lot 5326-4-1, -2 and -R2; are all three owned by your client?

Harry Gutierrez no, I don't think so... I think -4-1 and -4-2 are the only one.

<u>Commissioner Limtiaco</u> just for specificity, you're only requesting a zone change for 5326-4-1, 5326-4-2 which are the two slivers between Route 3 and 5326-8 which is owned by your client, not Route 3, but the -8. And in addition to those lots you are also requesting zone change for 5326-12 and -14.

Harry Gutierrez that is correct.

<u>Commissioner Limtiaco</u> which are the two angular lots south of the main -8 lot.

Commissioner Oh so it's not inclusive of R2; 5326-4-R2.

Commissioner Limtiaco that's what I asked Mr. Gutierrez to clarify and he said no. Mr. Vice Chair, I just wanted to bring that up because in map 13458

<u>Harry Gutierrez</u> I'm sorry, I'll take that back. On the Deed it says -2-R2. I think they did purchase all three lots.

Commissioner Limtiaco and did they consolidate?

<u>Harry Gutierrez</u> they cannot consolidate now because originally when they purchased that they had four different owners on it when the heritance and it was originally owned by Mr. Roberto.

Vice Chairman Cruz so who owns it now?

Harry Gutierrez I'm basing myself on the Administrator Deed of Mr. Goodwind (sic).

<u>Commissioner Limtiaco</u> okay, well let me ask Mr. Penmer this question. So Pen, this map there with the sliver lot between that three and the main -8 lot; there are one, two, three sliver lots here, two which front -8 and one that is north of it and it fronts -7 [Mr. Gulac responds "right."]. So, my first question is are all three sliver lots owned by and is part of this request as indicated by this green highlight which I did not highlight it was in our packet.

Penmer Gulac only those two and then it was parceled for the easement.

Commissioner Oh and so what is the correct lot name. Is it -4-

Penmer Gulac -2-4-R1 and -4-1.

Commissioner Oh 4-1 and 4-2.

<u>Commissioner Limtiaco</u> where is that in our packet? Because in our packet according to record number 850095, it shows 5326-4-1, -2, -R2, there is no R1. This is the map so where is it on this map. Can we make sure so that we are not rezoning property that doesn't exist.

Penmer Gulac there should be three maps.

<u>Commissioner Oh</u> right, and that's the map we're looking at. The request is for ... the problem is your request is for 4-1 and 4-2-R1.

<u>Marvin Aguilar</u> Mr. Gutierrez, would you be able to clarify what lots are being rezoned and under the (inaudible to excess noise) Goodwind.

<u>Harry Gutierrez</u> the new map would be ... the original lot of 4-2 was subdivided and it became 2-2-R1; that would be the correct...what happened there they had to give an easement into the Benavente family in the adjoining and made it into a right-of-way.

<u>Michael Borja</u> they made the over lot into a right-of-way? [Mr. Gutierrez responds "yeah."] Okay.

[Discussion continues amongst the Commissioners on clarification of the lot numbers in abovementioned discussion.]

<u>Commissioner Limitaco</u> so Mr. Chief Planner, Mr. Vice Chair; it was just pointed out to us that according to the notice, so this notice the last lot number is 5326-2-R1.

Michael Borja so there was an error in the notification.

Vice Chairman Cruz there's an error so what do we do.

Marvin Aquilar we have to table.

Commissioner Limtiaco just that lot ---

<u>Marvin_Aquilar</u> well the thing is this application is under one; these lots are all under one application.

<u>Michael Borja</u> you can't approve the other lots...the process for everything else minus that one lot.

Marvin Aguilar if you resolve to do so ---

Commissioner Limtiaco is that a fatal flaw?

Marvin Aguilar it's fatal with respect to public notice.

Commissioner Limtiaco can we just take a minute to explore that really quick. So this is the Notice to Rezone. So this is the photo of the Notice to Rezone that physical sign that is on the property. However, I believe that the notice that appeared for the general public in the newspaper had the lot numbers that are actually that are actually on our application which is correct. So, Ms. Finney is that fatal or is that ---

Kristan Finney (Legal Counsel) commented that she did not know off hand.

<u>Michael Borja</u> how about the letters, did the letters statein the 500-foot radius. The official notification posted in the newspaper is correct. It matches the exact same lots that's listed in the application. It's this sign that has an error on the last lot listed.

Chairman Arroyo so, it's just the sign that's incorrect, missing the 4. The sign is critical though.

<u>Marvin Aguilar</u> the Executive Secretary brings up a good point that if you are notified with the correct numbers perhaps those the Commission can resolve, can resolve in session to allow for the passage of recommending for those particular lots and perhaps come back later on for the correct lot.

Commissioner Limitaco is there a process to amend or to rectify ... seemingly minor errors like the physical sign on the property if all the other notice requirements have been fulfilled? Like for example Executive Secretary said the notice in the newspaper was correct, the notice to the Mayor and to the ARC numbers were correct, for the radial notice that was mailed was correct then I would assume there would be ... you could probably verify the assumption that it was sent to the owner of ... the radius of Lot 5326-4-2-R1 and not 5326-2-R1.

<u>Kristan Finney</u> the notices doesn't mean ... it's not a minor thing to talk about having the proper lot be identified. And if you don't meet the notice requirements then any approval is going to be null and void.

<u>Chairman Arroyo</u> right, so it does delineate the different types of public notices and it does specifically talk about the physical sign and it does say that if any of those notices are compliant...

<u>Marvin Aguilar</u> and it is critical to changes of changing zones and conditional use permits. But with respect to accomplishing what the intent of the spirit was it did.

<u>Chairman Arroyo</u> well, you're saying he's correct as far as the other lots not just this lot. So that he would have to come back just for the one lot.

Vice Chairman Cruz does he have to do the process over again for that one lot?

Chairman Arroyo I would say yes.

Commissioner Limitaco the entire process? Or just the sign, just what was in error.

<u>Chairman Arroyo</u> there's two ways we can do this. We could say that this is all one application since the notice was wrong then we have to reboot; come back when the sign is correct or as Mike said, we could say okay let's pick this application apart and say that as far as the lot descriptions that were correct we can make the decision on those as far as the lot description that is not correct then we would have to reboot.

<u>Commissioner Limtiaco</u> so if we decided so if we picked ... whichever way we reboot, does that mean the process has to start for Lot 5326-4-2-R1 from the very beginning to reiterate an ARC hearing that they've already discussed

<u>Chairman Arroyo</u> I think in the past when notices weren't correct or they weren't up, we had them put them up and then come back in the five days or whatever day was required.

<u>Commissioner Limitaco</u> can we take that option? I mean that seems more reasonable.

<u>Chairman Arroyo</u> it's just the notice requirement it's not like they have to do the whole thing over again.

<u>Commissioner Limitaco</u> so it would be the public hearing would still state that the actual date of the GLUC hearing would be continued to whatever date.

<u>Chairman Arroyo</u> right; I think that's what we've done in the past. Like if there's a date wrong we had them correct the date things like that or if the public hearing date was not there we had them put it back on.

Harry Gutierrez so, I'm kind of lost here. Which lot was not listed correctly?

<u>Chairman Arroyo</u> the incorrect number is the 5326-2-R1 it should be 5326-2-4-R1; you're missing a "4."

Vice Chairman Cruz so, what can we do? What are we going to do.

<u>Michael Borja</u> correct the sign and post it for whatever number of days right that's what you're saying.

Chairman Arroyo that's what we've done before. The sign is important Harry.

<u>Commissioner Limtiaco</u> so, I think we'd continue it.

<u>Michael Borja</u> continue it to the next meeting which would have a proof that the sign was changed. The date it's put up and the date itself.

<u>Vice Chairman Cruz</u> do we have to advertise it also. Waiting for Marv to see if we could move them to the next meeting.

[Discussion continues on the May GLUC agenda and publication notice requirements.]

<u>Vice Chairman Cruz</u> Marvin, we're talking about this and if they go out and correct this tomorrow they go out and put the correct sign and everything okay. We're going to continue...so it possible to put this on the next agenda for just this one? We've discussed it already.

<u>Marvin Aguilar</u> if we're talking about it as exactly the point; you're going to be talking about it as old business. Then we follow the general open government which is five working days and then two workings days prior to. And so the answer is yes.

Vice Chairman Cruz so would they be able to make it on the 28th or no?

Marvin Aguilar yes.

<u>Commissioner Limitaco</u> because we would have discussed everything; it would just show the Commission proof of correction of the sign.

Marvin Aguilar and I think it's also important to recognize the flaw for record.

<u>Commissioner Limtiaco</u> Mr. Vice Chair, I recommend that we ... we discussed what we needed to discuss about this and order the applicant to correct the mistake made on the physical sign.

<u>Vice Chairman Cruz</u> I think we've discussed it. Is there any other questions that you guys have on this before we tell the applicant? [None noted from the Commissioners]

So, you understand what's going on Harry? [Mr. Gutierrez responded "yeah."] Okay, so work with Marvin to put it. You gotta put up the sign as soon as possible.

Harry Gutierrez I'll have it done by tomorrow; and I have to change the date again?

<u>Commissioner Limtiaco</u> yes.

Harry Gutierrez I'll do that. I know not to change the whole sign.

Commissioner Limtiaco you need to correct that last lot number and the date.

Harry Gutierrez I'll have them both done tomorrow.

<u>Vice Chairman Cruz</u> so we order to continue this application until the next available which is the 28th.

[There was a brief discussion whether or not this application would have to be published in the newspaper. Chief Planner quotes for the record Chapter 5 GCA Section 8107 on Notices of Regular meetings; any public agency which holds a meeting required by statute resolution shall give five (5) working days public notice and a second public notice at least forty-eight (48) hours prior to the start of the meeting.]

Vice Chairman Cruz next item on the agenda -

Zone Change

B. The Applicant, Sin-Hung Construction Corporation represented by Harry D. Gutierrez; request for zone change from "A" (Agricultural) to "M1" (Light Industrial) zone, for the proposed construction of a warehouse, office spaces, equipment shelter and other permitted light industrial uses in an industrial zone, on Lot 5224-1-8-2, in the Municipality of Barrigada, under Application No. 2015-39. Case Planner: Penmer Gulac

<u>Marvin Aguilar</u> summarizes staff report to include purpose, facts, public hearing results, staff analysis/discussion, conclusion and recommendation. [For full content/context of the staff report please refer to Attachment B.]

[Attachment B - Staff Report dated April 13, 2016]

Commissioner Limtiaco Mr. Chief Planner, have you received anything from EPA?

<u>Marvin Aguitar</u> you have attached a summary of the ARC report, ARC comments. We have not received any position statement as of the crafting of this letter. Our ARC summary report is dated April 6, 2016.

Commissioner Limtiaco I do want to address one comment from the Bureau of Statistics and Plans which is their first comment regarding a detailed as-built plan of the lot which includes number of buildings and everything else. I wanted to address this because I believe that in the staff report and the general report it talks about a container that's on there. To me it's deemed temporary; and I don't believe that a temporary structure should necessarily be included on, necessarily as-built. But for zone changes and for this application in particular, an as-built plan that contains a container house on it or container storage is of no significance to me. I just wanted to address that.

<u>Chairman Arroyo</u> I think that these are just items that are required to be submitted with the application itself. I think that's what they're doing is that to complete the application they submit the information that is required to be submitted.

Vice Chairman Cruz go for it Harry ---

Harry Gutierrez my clients he and his partner finalized their agreement as per EPA's requirement they will do a site drawing for drain system, the catch basement, connection to the sewer and the layout of the units that are put there containers and the warehouse that was put there open warehouse. And they would have to I believe, correct me if I'm wrong, EPA would require that on their next building permit application and license and they have to renew their license under a different company. So EPA would get involve (sic). Notice was given to them already by EPA, Angel Marquez. They're very much concerned about the water runoff.

<u>Vice Chairman Cruz</u> so by the time they get their permit EPA will provide and your client would adhere to EPA's requirements.

Harry Gutierrez I notified the owners also and they have to hire an engineer for the sketch out.

Commissioner Limtiaco so Harry, I agree generally with our short-form EIA that you included with the exception of Item 7A & C. The question is very broad; will the project result in any of the following environmental or infrastructure impacts. The first one is the production of toxic or hazardous waste. I think the better answer would be possibly for that first one. You're asking us to rezone this to light industrial so a warehouse can be a warehouse for anything. It doesn't have to be a warehouse; it can be any use under the uses of this zone. And then for "C" production of air contaminants whether temporary or permanent, I'm very glad that you put "yes"; however, as far as significant impact I think a better question would be it would be based on the actual post-zone change uses. I just want to throw out that because I think that generally when these applications for zone changes M1 comes to us, we generally look in the area and we think well okay there's a bunch of different M1s. The situation is changing and you mentioned that yourself with Guam EPA. As there are more and more M1s that are changed, M1 lots that are rezoned to M1 one (excuse me) and they're all together, I think collectively it poses a much greater hazard. I just wanted to point that out in your EIA. Otherwise, I'm good.

<u>Vice Chairman Cruz</u> does anybody else have any questions for the applicant? If there's none, it's now open for public comments. Is there anybody for public comments?

<u>Public Comments</u> [None noted, public comments closed.]

Vice Chairman Cruz okay was there any

<u>Commissioner Limtiaco</u> so Mr. Vice Chair, we have all four Commissioners in the room. I would like to move if you don't mind.

I would like to move to approve Application No. 2015-39, zone change from "A" to "M1" on Lot number 5224-1-8-2, Tract 308, in the municipality of Barrigada; and the applicant shall adhere to all the ARC recommendations and Commission conditions.

Chairman Arroyo second.

<u>Vice Chairman Cruz</u> motion by Commissioner Limtiaco, second by Chairman Arroyo; discussion? [None noted]

All in favor of the motion say "aye" [Chairman Arroyo, Vice Chair Arroyo, Commissioners Limtiaco and Oh], those oppose. Motion passes.

[Motion to approve Application 2015-39 was passed unanimously with a vote of 4 ayes, 0 nay.]

V. Administrative and Miscellaneous Matters

Order to Show Cause

E. The Applicant, Grandview Development, LLC; order to show cause as to the reason(s) for failure to comply with the conditions of approval of an amended TDP for the Grandview Shopping Mall as noted on the GLUC Notice of Action dated March 29, 2013, under Application No. 2008-003B. [Continuation: GLUC hearing of 1/14/2016] Case Planner: Frank Taitano

<u>Marvin Aguilar</u> reads the Commission brief to include purpose, facts, conditions noted on the previously approved Notice of Action, and recommendation. [For full content/context, please refer to Attachment E.]

[Attachment E - Commission Brief dated April 7, 2016]

Commissioner Limtiaco I have a question. In the staff report you had mentioned that the ongoing construction of the improvement for water, sewer, power, parking lot facilities is estimated at 18.25 percent completion. So, this application has a long history; we can go back to the Ino Corporation with their original plan. I just need to understand ... 18.25 percent of what plan?

Marvin Aguilar at the last meeting as I recall they were doing a lot of external work at this time. So, they were revamping ... they had purchased additional property for what is proposed, what is designed for the proposed parking and working out doing some work ... installation of certain infrastructure to include water and I think the access into the property. There has been no work on the ... within the internal building itself. I think that is based on the (undecipherable/inaudible) that they are waiting for a suitable occupant and they would improve at the renter's request.

Commissioner Limtiaco you mentioned that that as far as the improvements for water, sewer, power and parking facility, parking lot facilities that I was asking about at 18.25 percent completion. If I look in the applicant's package on Plan A-1 and title is Tumon Bay Shopping Center and it still says owner Ino and on the very bottom in the middle it says amended site plan. On the top right, there's a shaded area that says this shaded area is location of newly acquired lots 5126-2-1, -2-2, -2-R2, and it references big shaded area that says ground parking space area reserved for blah, blah, blah, number 5 joint parking with the proposed with the Guam International Market which is going to be located across the street. So, my question is this application for Tumon Bay Shopping Center, but we had heard, the Commission had heard in the past that the same applicant that appears before to show cause regarding the Tumon Bay Shopping Center is also the owner of the Guam International....the lot that had been slated for the Guam International Market which is across. And we had heard also that the applicant does not intend to proceed with the Guam International Market at this time. [Mr. Aguilar responds "yes ma'am.] So if that is the case, does the scope of this large area which consists of at least three lots combined does the scope of the parking work changed? Has it reduced the footprint because they no longer will need to accommodate at this time the Guam International Market?

<u>Frank Taitano (Case Planner)</u> yes, it will be ... the number of parking will be reduced in the amount of parking that is required for the international market. And they actually withdrew that application, they're not proceeding.

Commissioner Limtiaco so, we focused on this application before us and specifically sheet A-1 still. If the grey area for the new parking, there's a large rectangular grey that shows the lot boundary line and half of that has a shaded hall out area. Generally it's a hall out area within the larger grey space. My question ... going back to 18.25 percent; so is that ... how am I supposed to (inaudible) area Mr. Chief Planner. Is it half of the area that will be completed for the parking improvements? Or are we still looking at the entire shaded lot?

Marvin Aguilar perhaps the applicant can expand on that, but what we've observed out there was extreme, significant ground preparation. What I mean by that is cutting of the property to the boundary line, putting up a retaining wall, improving on the easement coming into the property and there's also

<u>Frank Taitano</u> and we also have ... interject here; just prior to the meeting the applicant's representative provided me a copy of the transmittal letter and a new site plan. And I think the new site plan which is going to be provided by the applicant's representative would explain your question.

<u>Chairman Arroyo</u> how does the new site plan differ from the amended site plan in the application?

[Mr. Taitano asked the consultant to provide a copy of the amended site plan to the Commission – Exhibit 1. Commission takes a moment to review the site plan provided by the applicant.]

<u>Vice Chairman Cruz</u> has everybody have enough time to review it? Marvin and Frank --- we'll move forward.

Marvin Aguilar we've identified some of the changes from the (undecipherable) to this new plan.

Vice Chairman Cruz the applicant please. You have the floor.

<u>Richard Sana</u> good afternoon Mr. Chairman and members of the Commission. (with Phillip Schrage, Fred Yamon of Grandview Development)

The last time we were here we were ... had to answer this position to show cause of this morning (sic) we're here to also give the status update and the amendments for the Tumon Bay Mall also known as Grandview Development LLC.

The Phase I of construction Tumon Bay Mall project involves civil works, infrastructure ... before I start; I'd just like to apologize about this late submittal. The cover letter was submitted had changes to Tricee Limitaco was referring to the 18 something percent of project completion and now it's at 22. And I guess as we go forward everything that this percentage goes up. And we're still targeting the end of the year date to fully complete this the civil works.

Phase IA construction of Tumon Bay Mall project involves civil works, infrastructure improvements sewer, water, power, parking lot facilities are ongoing estimate at 22 percent complete. Estimate completion date of Phase I will be at the end of 2016 which is the same as the NOA December 31, 2016 due to change mostly due soil conditions and relocation of ponding basin.

The performance bond required by the GLUC for hundred ten percent of total infrastructure cost for construction of improvement for water, power and sewer is problematic. The sample format has been obtained recently by DLM and provided to the insure ... the difficulty securing the performance bond due to the unfamiliarity of the insurance company regarding the assignment of the bond of the bond to the Government of Guam. As noted at the GLUC meeting of January 16, 2016 a performance bond the amount of 3.615 million already exist on the contract because Grandview Development LLC has a different insurance carrier than the contractor. Our insurance company cannot issue a performance to guarantee an existing bond issue by another company. Therefore, in lieu of the performance bond we agree that the GLUC or DPW will not release the occupancy permit or proceed to the next phase if the Grandview Development LLC fails to complete the required infrastructure.

I'd just like to mention a little bit about that performance bond a sample that we received from a, from a Planning Division. It was this... the sample that was provided was actually one of the performance bond that was taken for thethat was secured for the Paradise Meadows project that I was involved with. That performance bond was actually taken by a, taken out by the contractor Base Construction Company to ensure or assure that the project was completed to

give assurance to the owners that this project was going to be completed but it was also a requirement in order for us to get that final subdivision approval by the GLUC. It was not a bond particularly, you know; secure to provide the Government of Guam as indicated in in this report. And I believe that maybe we're talking about the same thing or or is it If we're talking about the same thing the bond was taken a hundred percent of maybe what the is is contractor will probably do is is maybe secure an additional bond of ten percent to cover you know to make it a hundred-ten percent. We are also submitting the proposed amendments to the approved tentative development plan which includes the removal of the proposed night market from the plan and the integration of the parking lot shown on the original site plan. And the ... amended site plan that you received this afternoon is attached ... when Commissioner Limtiaco was referring to the co-lots on the previous site plan...that was the site plan that was previously approved in the in the in the in the first amendment that was submitted and referred to by the 2013 NOA. And these are the things that we are amending which is in the co-lots in the new parking area reserve to relocate (undecipherable), spaces to due to site modification for entrance, park landscaping, bus parking, loading and unloading areas, vehicle turnaround, circle modification, expanding container parking, joint parking for proposed international market located on Lot 5132-1.

Okay, this will be amended by the site plan we submitted this afternoon which includes extension of ... our amendments here that we are proposing today is the extended timeline for completion of Phase I.

- a) Which is the civil works new timeline date to December 31, 2016;
- b) Approval of 712 parking stalls including 5 bus parking within zoning requirements of 700 stalls originally was 805 due to the joint parking requirements with the night market. Adjustments were necessary due to terrain features of acquired lots;
- c) Then we have the construction four bus shelters;
- d) Approval of amended site plan submitted, that we're submitting to you today;
- e) Phase 1B shopping center is envisioned for a four-year completion. This is a separate timeline from civil works and infrastructure improvements noted above in Phase IA; and,
- f) Extension of timeline for condominium building twin towers following the opening of the shopping mall.

We submit this and we trust that this meets the Commission's expectation as requested from the last GLUC meeting.

Commissioner Limtiaco Mr. Sana, when you say the shopping center which is Phase 1B which you envision in four years. Four years from what day? Are you talking about 2016 or are you talking about from when?

Richard Sana well the maybe a Oh I'm sorry; this is Fred Yamon and Phil Schrage from Goodwind Development. Maybe they can answer that because right now as was indicated earlier the completion of the shopping center would be based on the acquiring or somebody

coming in an anchor tenant would coming in and would be a ... is it a design built Fred...design built for whoever is going to come in and occupy the space.

Phillip Schrage obviously the reason the night market is not part of this (I'll get around to answering that question) and the reason why we acquired those other properties along the side is because anchor tenants they have requirements to their leases so many parking spaces for based on how much space they lease from you. They don't care about parking spaces across the street those don't count. They want parking spaces close to their frontage which would be the first level of the shopping center. Like I said, at this time we don't know how large the anchor tenant is going to be. I'll be going to Las Vegas next month for a convention for International Shopping Center. Until we know how big the anchor store is going to be; is it going to be 30,000 or is it going to be 50,000 or are they going to take the whole first level or they only going to take a portion of the first level. Obviously, you wouldn't open a shopping center without an anchor store. So, far as the first floor design you can't really design that until we know how much space the anchor store will occupy. We know that there will be a food court of the second floor. They'll occupy about one-third of the second level. There are no food courts in Tumon. They're very popular with the tourists; they are very popular with the residents of Tumon. I can lease that overnight literally I have more tenants that want space in that food court than we have space. But as far as designing the first level because that's what anchor store generally do. They don't want to be second level. It's possible they could take two-thirds of the second level, the first floor, but I don't think I'm that good of a salesman. But anyway, so there's where we are right now in terms of the four years obviously we're going to need an anchor tenant to be able to actually design the first level.

<u>Commissioner Limtiaco</u> okay that was a very good background. But my question is shopping center Phase IB four years; are we looking at four years from the modified Notice of Action? Or are we looking at four years from today but very simple, and I understand and we're just trying to get a timeline.

<u>Phillip Schrage</u> we would prefer a longer time because as you know it's not easy to get an anchor store to come all the way to Guam.

Commissioner Limtiaco okay, so four years from today got it. Mr. Sana also I want to clarify here on your bullet point for 712 parking stalls including 5 bus parking your plan shows 6 buses plus parking spaces. Which one is correct?

Phillip Schrage we had to delete some because it was on a bull-cart trail.

<u>Commissioner Limtiaco</u> excuse me...I'm speaking of the two documents that you just submitted and they conflict with each other. So, which one is correct?

Richard Sana it's got to be the five or whatever because I think

<u>Commissioner Limtiaco</u> so it's five, not six bus parking spaces.

Fred Yamon actually six right now. It's six.

<u>Commissioner Limtiaco</u> Mr. Vice Chair, just reflecting that the letter should be corrected to include six bus parking and on the map which is drawing number 1-A, Tumon Bay Mall Grandview Development LLC should be six parking spaces and that's correct and the total parking should be <u>(inaudible due to excess noise)</u>. So Richard in regard to your second page, first bullet notation numbers one thru five; at five it says joint parking with the proposed international market located on Lot 5132-1. However, the paragraph right above that it says that you wanted to remove the proposed night market from the plan. So, are you asking us to still keep number five which is no longer has a reference.

Richard Sana no, those numbers these are where the these were came with the amendments and we're amending these things and that was part of the, part of the of the NOA here in the last previous NOA. Those are the things we are amending by the ones the bullet points that follow it. It's being replaced by the most

[Commissioner Oh clarifies what Commissioner Limtiaco was inquiring; however, unable to transcribe what was said due to overlapping testimony made by Richard Sana.]

Commissioner Limtiaco thank you Commissioner Oh for clarifying that for me.

Richard Sana the ones you were referring to were previously approved and we're amending it with the new site plan that we had submitted.

Vice Chairman Cruz so, number five is out.

Richard Sana no, all of it.

<u>Commissioner Oh</u> I have a question. What's the purpose of the fuel tank? Is it for your generator?

Fred Yamon yes.

Commissioner Oh where exactly is you proposed generator going to be located?

Fred Yamon in the corner of that building at the right side.

[Discussion ensues. Mr. Schrage refers to the site development plan and points out the location of the generator to the Commission which is located to the far rear of the property.]

<u>Commissioner Oh</u> my concern is this. The fuel tank is obviously very close to the ponding basin. Based on your previous plan your fuel tank was quite a distance away from the ponding basin. Based on the proposed plan, the ponding basin and the fuel tank are pretty close to each other.

Fred Yamon that fuel tank is above grade, it's not underground tank.

<u>Commissioner Oh</u> that's even more of a concern because I'm trying to figure out what the grading looks like. I mean I'm sure there are requirements with the berm and secondary containment and so on and so forth. And all of that probably would have to be approved by EPA.

Richard Sana it's a requirement anyway for the containment.

Commissioner Oh okay, I just wanted to make sure. That's bit away from the actual generator.

Fred Yamon yes it is.

Michael Borja is EPA going to impose all the pressurized line systems and all that for this?

<u>Commissioner Oh</u> because if you put an underground line you're talking about leak detection systems now, you have all these additional requirements compared to having a tank that's located adjacent to the generator. Trying to see how...what ways; I'm trained as an engineer, so I'm trying to think of ways to save cost here.

Fred Yamon we'll take a look at that. We haven't really gone into the design at this point.

Vice Chairman Cruz so is it subject to change?

<u>Fred Yamon</u> I would say so. As soon as we are ready on the interior design of the building we will finalize that.

<u>Chairman Arroyo</u> I just want to point out to you Fred that any changes to the site plan you need to come to us first for review and approval.

Fred Yamon yes.

<u>Chairman Arroyo</u> I thought the last time that we were here the condominium, twin towers would be taken off for now. So, this last bullet point calling for extension of time for the twin towers to, I guess, to be built after the ----

Phillip Schrage no, no. We're not taking it off. We're just sayingyou know, delaying it, not taking it off.

Vice Chairman Cruz it could be I mean in otherwords it is still part of your

Chairman Arroyo but it's not on your site plan. It's not on your site plan.

Phillip Schrage no.

<u>Chairman Arroyo</u> so, what we have to have is we have to have a site plan that mirrors exactly what you're planning on doing. So if you have the twin towers and want to do that in the future, you need to include it on the site plan.

<u>Commissioner Oh</u> that's where the conflict lies ... in your packet here, you do have some drawings of the towers and then in your new submittal it's not.

<u>Chairman Arroyo</u> that's why I thought it was off the table. I think the discussion was because you were not exactly, I mean, you were waiting for the market to improve, the housing market or whatever it was to be better that it would be more feasible for you build the condominiums and that you would come back to future date with another request.

Phillip Schrage I think that's correct; that's correct.

<u>Chairman Arroyo</u> I think that would work better for us rather than you go back and redo this. So, we'll just take that last bullet point off.

<u>Commissioner Limtiaco</u> the very last one, the extension?

<u>Chairman Arroyo</u> yeah, for the condominium twin towers. I think the point Commissioner Limtiaco was trying to make when she was trying to get a date four years from the ... is that the rules and regulations for the TDP says a maximum of four year completion time. So, if we're sticking to four years; I mean we can extend it. Because you were talking about maybe getting more time and the difficulties of getting an anchor tenant and I don't think we'll have a problem extending it. As long as we have a plan in the horizon to look at.

I think the question again is about the performance bond. The performance bond is totally different from the performance payment bond from your contractor. That bond is to secure the Government of Guam to ensure that the project gets completed. So, it's a totally different performance bond.

Richard Sana is it a bond that ... who is it going to go to. Is it going to which entity?

Chairman Arroyo it would be Land Management or Public Works or Land Use Commission.

<u>Phillip Schrage</u> we deal with the biggest insurance companies on Guam, and we've approached all the companies that we deal with and none of them say they can do it. They say because there's already a performance bond by our contractor they can't, they can't do another performance bond on something that there's a performance bond on. We checked.

<u>Fred Yamon</u> actually that should be, the insurance company of DMV (sic) and we actually asked them if we could be, if GovGuam could be additionally insured.

<u>Vice Chairman Cruz</u> so in otherwords if I understand this right you're...the performance bond that you have now it's basically at the sametime it's also a payment of performance bond at the sametime that is the performance bond the contractor is getting is to you not to what a, what a...now maybe what you can do I don't know let me ask Marvin. Is there any type of bond that we have gotten of what we're asking them?

<u>Marvin Aguilar</u> well, we do have an example with Tagada performance bond program that was issued out. We don't know how the construction phase was secured.

<u>Vice Chairman Cruz</u> because you know maybe what you can go back to your bonding company is that asking them rather than trying to get a new performance bond asking them if GovGuam Department of or the Guam Land Use Commission can be included in the

Fred Yamon we already asked that Vice Chairman. We already did.

Commissioner Limtiaco I think what the Chief Planner is saying is that it has been achieved before. I would recommend Mr. Vice Chair that the applicant speaks with Planner Frank and Chief Planner Marvin outside of this (meeting) to see if we could still work this issue. Quite frankly Vice Chair, I am not ... to no fault necessarily of the current owner, but their proposal to just hold occupancy I don't think is enough. And then it goes back to the history of this TDP. Already we had one default. So, risking another default there's a saying that says you know, fool me once shame on me (I totally messed up the punch line) so, I really want to work this issue a little bit more rather than just accept the proposal.

<u>Frank Taitano</u> can I just clarify Mr. Sana's thing. The performance bond that I provided them is the same performance ... it is not a performance bond for Paradise Meadow. It's a performance bond for Tagada. That's the performance bond that I emailed to Mr. Fred Yamon. It's basically stated that it was written out to the Guam Land Use Commission. We're not in a position to figure that one out.

<u>Commissioner Limitaco</u> yeah I understand you already provided them the material. I guess what I've been hearing the Chair say and I agree with him; is it has worked before it's been done so, we understand that there may be difficulty to approach the bond issuers on Guam but it has been done by a local insurance company.

<u>Frank Taitano</u> in fact I can support their statement because I did get a call from Cassidy's Insurance and they were asking me how. I did provide Grandview a copy of one that was done by another insurance company.

Commissioner Limtiaco this is for a construction right?

Marvin Aguilar this is for the development.

<u>Vice Chairman Cruz</u> so, so ... the reason why we're discussing it they just presented to us a copy of a performance bond that was issued and what we're asking for from another client okay. And I do understand you saying that you've gone basically insurance companies on the island. Like Commissioner Limtiaco had said is It's a back and forth issue about the bond. You've got your contractor giving you that and I'm trying to ask you to talk to them to include the GovGuam within your performance bond and then now we've got ... I might as well just say it the performance bond that's I'm looking at is issued by Dongbo (sp?) okay. And maybe can you guys get together and come with a

<u>Fred Yamon</u> Vice Chairman, Great National Insurance they're insurance carrier actually is Dongbo (sp?). We approached them.

Vice Chairman Cruz so why don't you show them this and say

Fred Yamon we approached them, we showed them that ---

Vice Chairman Cruz this one and they said no?

<u>Fred Yamon</u> yes, they cannot because there's already an existing bond by Cassidy under a different insurance firm. It's not that we don't want to ... (inaudible due to excess noise).

Commissioner Limtiaco you know Richard and applicant representatives, I don't know if this was discussed before but I wasn't here at the meeting earlier this year. The Guam Land Use Commission looks at and issues Notice of Actions for TDPs often. And in the recent years, we have been, those projects, have been put in jeopardy so much that it would end up in bankruptcy. And you know that full well because you bought this project, the property out of bankruptcy so it was foreclosed already. So, that was one project out of a handful of projects that went into bankruptcy and an NOA issued by this Commission was attached to that project. So this Commission is not necessarily trying to focus attention on you or ask you to jump through hoops that we don't think is reasonable. But we have a job to do and our job is to protect the people of Guam and the Government of Guam, and so we're trying to find a way to do that. If you decide tomorrow that you're not going to pay any of the bills and your company, although it's probably not likely, decides it will allow itself to become bankrupt, we're left in the same position that we were in prior to you buying out the project. Now, we have something half built. What do we do.

Richard Sana there's a whole thread of emails that he was communicating trying to find a solution to this performance bond. And some of those emails are attached to the back. So you can see they've been working in good efforts in trying to do that.

<u>Phillip Schrage</u> we're willing to even do an LC; money isn't the object; Mr. Tan is a multibillionaire. So, we're willing to do an LC.

<u>Commissioner Limtiaco</u> you know what come up with a couple of plans and present it to us. Know that holding off on the occupancy permit is I think off the table. I don't think any of our Commissioners

<u>Fred Yamon</u> the problem we have really is we're not a contractor; any developer who has not gotten a performance bond at all, we really have difficulty getting one.

<u>Commissioner Limitaco</u> I understand that and I appreciate that I'm talking to three different people who ... that words matter to, the definition of the correct word. So, maybe we should go away from saying performance bond, necessarily, but some sort of fiscal assurance. Some sort of assurance that ties your hand to make sure that you are responsible if you do not finish it.

<u>Richard Sana</u> that's why I think that's why they propose they can hold off on their occupancy or they can stop whatever

Commissioner Limtiaco what if we never get to that point.

<u>Phillip Schrage</u> that's why (inaudible/undecipherable) the government, we don't finish it the government gets some money...LC.

Chairman Arroyo I think an LC would be a good alternative. I think Richard the idea is the performance bond is there to protect the government if the project should fail to be completed. So that's what Commissioner Limtiaco was saying is that if for some reason this project is walked away from and it's half completed, we're not in, the government is not in any better position to resolve an uncompleted project. The think I suppose ... the reason I suppose the bond is there for so we don't have eye-sores, half completed buildings in the heart of Tumon, in our hotel district, and that makes some kind of sense. But, I think an LC would probably work. I think what you might want to do is have language on your LC, send that to you Mike and if you want to run that by Kristan to see if the conditions of the LC are satisfactory. And if that's the case then we could move forward from there. It would be a lot cheaper for you guys too.

Phillip Schrage it's not the money, the insurance company won't do it.

Chairman Arroyo I think this would be a good recommendation.

<u>Commissioner Limtiaco</u> Mr. Chair, would you like to accept

Chairman Arroyo I think we have to wait for fourth member to come back so

<u>Commissioner Limtiaco</u> while we're waiting for him to come back...I recall when you first purchased this property, and although he is no longer with you, we reached out to Willy Onglao to remind him or actually not to remind him, but to give him notice that there was this NOA that was hanging out there. And this Commission has been very, very patient in this entire process of you guys getting up to speed after becoming the new owners. I was just made to find out that

even after the January meeting; we're still late with six month status reports. Status reports are really important to this Commission. It means that you're not only taking action but you're cognizant that you're still under a TDP. And we ... when there's an NOA, and although I do agree with the Chairman, generally the Commission lacks the enforcement power, but we still have a huge hammer in our tool box and it's the only tool we have and that hammer can completely destroy your NOA and that would leave you without options. You can't get a building permit without an NOA for that property. So we never want to get to that point. We want to be patient, but please don't humor us but actually work with our staff to get these reports in on time.

<u>Michael Boria</u> I think you saw two examples today of those kinds of things where they failed to meet the requirements and now they're having greater issues. And then for the other one just for the condominium where they (remaining comments inaudible due to overlapping conversation). That's why this performance bond is ... at some point we might have to take that action that's something and that it's meant to ensure you guys perform.

Vice Chairman Cruz so, no other questions? [None noted]

Commissioner Limtiaco so, we accept this status report.

<u>Vice Chairman Cruz</u> so the question is do we have accept this status report. On the tentative development plan and then I guess figure out how we're going to work on the performance bond.

Commissioner Limtiaco well Mr. Vice Chair, I can accept everything on this report other than the performance bond. I propose right now to make it simple, I propose that we accept the status report and the portion of the revised development plan that they gave us that is only for limited to the actual mall structure and the revised parking area which includes a filtration basin, ponding basin and other civil infrastructure. But, I want to echo what the Chair had said that this is not necessarily a complete submittal for the entire development. So I feel that we could only accept this which is the map and accept this report and maybe ask them to come back at a time of your choosing to discuss the fiscal assurance formerly known as performance bond.

<u>Chairman Arroyo</u> we have to a motion to accept the map. So the first thing is to accept the six month status report....

Commissioner Limtiaco Mr. Chair and Mr. Vice Chair, I move to accept the six month status update which includes the portion of the amended site plan as mentioned earlier that focuses only on the proposed Tumon Bay mall structure and revised parking area, and this plan is dated April 4, 2016 and it's a two-page letter that should serve as a status update for the applicant. That's part one of my motion; and the second motion is, I move that we continue the Order to Show Cause and have the applicant come back and address the financial portion assurance of this application.

Commissioner Oh I second.

Commissioner Oh I second.

Vice Chairman Cruz discussion?

<u>Chairman Arroyo</u> the reason why we want you to come back on the LC is because we need to arrive at a dollar amount. I think that was the issue the last time you came here is we needed to arrive at a dollar amount. So, when you come back we need to know what would be the value of the LC. I think we need to make sure that it's 100 percent of the remaining work to be done.

<u>Fred Yamon</u> we looked into that Mr. Chairman; the value amount of the infrastructure cost is about 800,000 dollars.

Commissioner Limtiaco for Phase IA and 1B.

Fred Yamon part of the 3.615 million in the contract.

<u>Chairman Arroyo</u> I think the reason why we split this up into two; you didn't necessarily want to have to pay for such a huge performance bond so we said let's take a look at the infrastructure first and then we'll come back and we'll take a look at the building.

<u>Vice Chairman Cruz</u> so the performance bond we're looking for is for the current work which is actually the civil work.

Chairman Arroyo the remaining work to be done.

<u>Vice Chairman Cruz</u> remaining work to be done and at the sametime be researching another...whether you come back with a performance bond for insurance or by LC.

<u>Chairman Arroyo</u> we still need to talk about the mall itself because the expiry date that we have, the end of the year was only for the infrastructure. So, we need to come back and talk about the mall because we're talking about a four year horizon there.

<u>Vice Chairman Cruz</u> okay ... so all in favor of the motion [Chairman Arroyo, Vice Chair Cruz, Commissioners Limitaco and Oh], all opposed. [Motion passes with 4 votes, 0 nay]

Vice Chairman Cruz next motion ---

VI. Adjournment

<u>Commissioner Limitaco</u> Mr. Vice Chair, if there is no other business to discuss I move to adjourn.

Commissioner Oh I second.

[Motion to adjourn made by Commissioner Limtiaco, affirmed by Commissioner Oh; with all in favor.]

The regular meeting of the Guam Land Use Commission for Thursday, April 14, 2016 was adjourned at 5:15 p.m.

Approved by:

John Z. Arroyo, Chairman Guam Land Use Cemmission

Date approved: 4 28 2018

Transcribed by:

M. Cristina Gutierrez, Pro Tem DLM, Land Planning Division

Medlerey

GUAM LAND USE COMMISSION



Chairman John Z. Arroyo Commissioner Conchita D. Bathan Commissioner Tricee P. Limtiaco Vice Chairman Victor F. Cruz Commissioner Tae S. Oh Commissioner (Vacant-2)

Michael J.B. Borja, Executive Secretary Kristan Finney, Assistant Attorney General

AGENDA

Regular Meeting Thursday, April 14, 2016 @ 1:30 p.m.

Department of Land Management Conference Room 590 S. Marine Corps Drive, 3rd Floor, ITC Building, Tamuning

- I. Notation of Attendance
- [] Quorum
- [] No Quorum

- II. Approval of Minutes
 - GLUC Regular Meeting of Thursday, February 25, 2016/March 10, 2016
- III. Old or Unfinished Business [None]
- IV. New Business

Zone Change

A. The Applicant, Goodwind Development Corporation represented by Harry D. Gutierrez; request for zone change from "A" (Agricultural) to "M1" (Light Industrial) zone for the proposed construction of warehouses, office spaces and equipment parking, on Lots 5326-8, 5326-12, 5326-14, 5326-4-1, 5326-4-2-R1, in the Municipality of Dededo, under Application No. 2015-35. [Postponed from GLUC Hearing of February 25, 2016]

Case Planner: Penmer Gulac

B. The Applicant, Sin-Hung Construction Corporation represented by Harry D. Gutierrez; request for zone change from "A" (Agricultural) to "M1" (Light Industrial) zone, for the proposed construction of a warehouse, office spaces, equipment shelter and other permitted use in a light industrial zone, on Lot 5224-1-8-2, in the Municipality of Barrigada, under Application No. 2015-39. Case Planner: Penmer Gulac

V. Administrative and Miscellaneous Matters

Horizontal Property Regime

C. The Applicant, Karen Young S. Kim (Developer) represented by Melinda S. Swavely, Esq.; requests issuance of its Seventh Supplementary Final Public Report Happy Condo located on Lot 10, Block 1, in the Municipality of Tamuning, HRP No. 160, under Application No. 2008-78G.

Case Planner: Celine Cruz

D. The Applicant, Alupang Beach Tower; requests issuance of its supplementary final public report for Alupang Beach Tower Condominiums, on Lot #2015-1-REM-NEW-2 and Lot 131-REV-Unit 1, in the Municipality of Tamuning, in a "C" (Commercial) zone, HPR No. 92, under Application No. 1992-39C.

Case Planner: Celine Cruz

Order to Show Cause

E. The Applicant, Grandview Development, LLC; order to show cause as to the reason(s) for failure to comply with the conditions of approval of an amended TDP for the Grandview Shopping Mall as noted on the GLUC Notice of Action dated March 29, 2013, under Application No. 2008-003B. [Continuation: GLUC Hearing – January 14, 2016]

Case Planner: Frank Taitano

VI. Adjournment

ATTACHMENT "A"



Governor

RAY TENORIO

DIPÅTTAMENTON MINANEHAN TÅNO' (Department of Land Management) GUBETNAMENTON GUÄHAN (Government of Guam)



MICHAEL JB BORJA Director

DAVID V. CAMACHO Deputy Director

Street Address: 590 S. Marine Corps Drive Suite 733 ITC Building Tamuning, GU 96913

g, GU 96913 Lieutenant Governor

February 19, 2016

MEMORANDUM

TO:

Chairman, Guam Land Use Commission

FROM:

Guam Chief Planner

SUBJECT:

Staff Report - Application No. 2015-35, Zone Change, Lots 5326-8,-

12, -14, 5326-4-1 and 5326-4-2-R1, NCS, Dededo.

1. PURPOSE:

A. Application Summary: The Applicant, Goodwind Development Corporation, represented by Harry D. Gutierrez, is requesting approval of a Zone Change from "A" (Agricultural) to "M-1" (Light-Industrial) Zone for a proposed construction of a warehouse with office, equipment parking on each lot and other uses permitted within an "M-1" zone, located on Lots 5326-8,-12, -14, 5326-4-1 and 5326-4-2-R1, NCS, Municipality of Dededo.

B. Legal Authority: Title 21, Guam Code Annotated, Chapter 61 Title 21, Guam Code Annotated, Chapter 61 Article 6, Part 3 (Changes of Zones), Sections 61630 thru 61638 Zoning Law.

2. FACTS:

- A. Location: The two lots and site are fronting Route No. 3, and the three other lots are within 200 feet east of Route No. 3 and along the US Navy Petroleum Oil Lubricant (POL) utility pipeline/easement. The lots are approximately 500 feet north of the new Guam Regional Medical Center. (See ATACHMENT 1).
- B. Present Zoning: A" (Agricultural) Zone; Federal returned lands; Per Section 61217, Article 2, 21 GCA (Federal Excess Land Zoning) & Public Law 31-198.

Mailing Address: P.O. Box 2950 Hagatña, GU 96932

Website: http://land.quam.gov

E-mail Address: dlmdir@land.guam.gov

Telephone: 671-649-LAND (5263)



Facsimile: 671-649-5383



RE: Staff Report - Zone Change - Application No. 2015-35

GLUC Meeting Date of: February 25, 2016

Date of Preparation of Staff Report: February 19, 2016

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C. Lot Areas to be rezoned are as follows:

Lot 5326-8 Area: 16,087 Square Meters or 173,158.37 Square Feet or

4.3 Acres

Lot 5326-12 Area: 5,414 Square Meters or 58,275.5 Square Feet or

1.45 Acres

Lot 5326-14 Area: 4,073 Square Meters or 3,841.2 Square Feet or

1.09 Acres

Lot 5326-4-1 Area: 994 Square Meters or 10,669.28 Square Feet or

.26 Acres

Lot 5326-4-2-R1 Area: 833 Square Meters or 8,966.30 Square Feet or

.22 Acres

Total Areas of Lots: 27,401 square meters or 295,023 square feet or 7.375 acres

Note: See Attachment 2 (Official Survey Maps)

D. Field Description: The proposed development site and lots are vacant with overgrown with vegetation. The topography on all lots are fairly flat. On the southwest, there is a new medical center and a few residential duplexes to the east and single family dwellings on the northern boundary within 500 feet. A US Navy (POL) utility line/easement abut the two lots on the eastern lot lines. Sporadic residential homes, vacant lots and small farming (subsistence) still exist. All utility infrastructures are within 100-200 feet of the subject lots.

E. Masterplan: Residential - Agricultural

F. Community Design Plan: Conservation

G. Previous Commission Action: None.

3. APPLICATION CHRONOLOGICAL FACTS:

A. Date Heard By ARC: September 17, 2015

B. Public Hearing Results of: December 3, 2015

The required public hearing was held at the Dededo Senior Citizen / Community Center on December 1, 2015, at 6:00 p.m.. Present were, the Case Planner, Mr. Harry D. Gutierrez, Applicant's Rep, Mayor Melissa

RE: Staff Report - Zone Change - Application No. 2015-35

GLUC Meeting Date of: February 25, 2016

Date of Preparation of Staff Report: February 19, 2016

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Savares, neighbors and abutting lotowers (A total of 10-persons were in attendance.

The Case Planner presented the proposed project and read the positions statements from Department of Public Works, Bureau of Statistics and Plans, Guam Power Authority and Parks and Recreation--Historical Preservation Office. Mr. Harry Gutierrez highlighted details of the application; discussed the time frame of the application process, construction and completion time and other pertinent information on the proposed development as well as infrastructure requirements; access to the site and area of development near Route No. 3..

Public comments and concerns that were noted are as follows:

Ms. Jovita Quenga, (property owner and neighbor):

Question addressed to Case Planner: Is the Government of Guam addressing any improvements to the water pressure in the area since the lots will be developed for warehousing, office, equipment parking, etc..

Response (from Case Planner):

GWA has not submitted its position to this date, however, the Applicant must work with GWA in addressing any requirements for the proposed development, i.e. placement of reserve water supply tanks for warehouses, firefighting requirements, etc. GWA engineers advised DLM planning staff there will be capital improvement projects to commence, such as upgrades to the water distribution lines and also upgrade the northern public sewer treatment plant in Finegayan (Harmon Annex). These mandated projects would improve water pressure and distribution and sewer treatment support facilities that also serve the Harmon, Dededo customers and new developments near the new hospital.

Response from Mr. Harry Gutierrez (representative):

Further informed the Attendees that all requirements for water supply will be assessed and coordinated with GWA Engineering and that detailed engineering plans will be provided for review during permitting process, the owners will place all civil works on each site; location of ponding basin and water catchments will be coordinated with GEPA so that water runoff can be channeled to it. New sewer and water lines will be required and will be connected to Route No. 3.

RE: Staff Report - Zone Change - Application No. 2015-35

GLUC Meeting Date of: February 25, 2016

Date of Preparation of Staff Report: February 19, 2016

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Mr. Peter Perez: (Adjacent neighbor)

Stated he has no objection to the application, further stated that the development will benefit other lotowners to rezone their lots to construct new homes or make improvements for commercial or multi-family development as infrastructure like sewer and water is near their lots.

Mr. Gutierrez (representative):

Informed those in attendance that other permitting requirements will be adhered with. The project will be hooked up from the main to the sewer line from route No. 3. Reassured those present that a water reservoir for the development will be built on-site to augment proposed development, if required.

Ms. Jovita Quenga, (property owner and neighbor):

Concerning the easement improvement from Route No. 3 will be widened to accommodate additional traffic to warehouses and local traffic into Route No. 3.

Mr. Gutierrez (representative):

Informed those in attendance that other permitting requirements will be adhered to by applicant/developer, concerning the easement, realignment, near the pipeline (POL), etc., to and from Route No. 3., will make it safe to travel by residents in the area.

Mayor Melissa Savaress:

Informed those in attendance that the project is co-located near residences and that the light industrial activities be fenced and landscape the development site. She further started she will be meeting with her MPC on the rezoning application.

There were no major concerns or objections on the application. The hearing was adjourned at 7:15 p.m.

3. **STAFF ANALYSIS:**

A Zone change must addressed <u>Public Necessity</u>, <u>Public Convenience</u> and <u>General Welfare</u> criteria. Our analysis is as follows:

RE: Staff Report - Zone Change - Application No. 2015-35

GLUC Meeting Date of: February 25, 2016

Date of Preparation of Staff Report: February 17, 2016

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Public Necessity

This area is developing into more light industrial activities, was in response to the initial military build-up assumptions and to develop commercial activities along the major thoroughfare (Route No. 3). The expected population growth in the north and support activities for the military build-up. This area will provide logistical and storage requirements in the next few years and beyond. There will be a demand for warehousing/storage for all goods incoming and outgoing on the island that will serve the island community;

Public Convenience

The proposed warehouses and office and proposed uses on the property would be consistent with the current land uses near Dos Amantes and nearby area and across the street and a radius of 500 to 3,000 feet in the NCS/UKUDO area. The location is central to all areas with large population, and is very near the airport and commercial districts requiring warehousing and other storage space.

General Welfare

The proposed rezoning and uses will protect the general public, the immediate surroundings and properties by being consistent for light industrial activities that is ongoing at the present time and for future uses and requirements that is permitted in a light industrial zone. The owners/applicant will ensure that all permitting requirements and conditions of the land use commission and all government are adhered to as well as to minimizing impacts to the immediate surroundings and to the general public and specially our environment and the water lens below (part of the Northern Recharge Area). Development on the sites will provide employment of local residents and contribute positively to improving the island's growing economy. Department of Agriculture has submitted its AIS assessment with no objections and provides recommendation on the proposed development (AIS) Attachment 3.

RE: Staff Report - Zone Change - Application No. 2015-35

GLUC Meeting Date of: February 25, 2016

Date of Preparation of Staff Report: February 19, 2016

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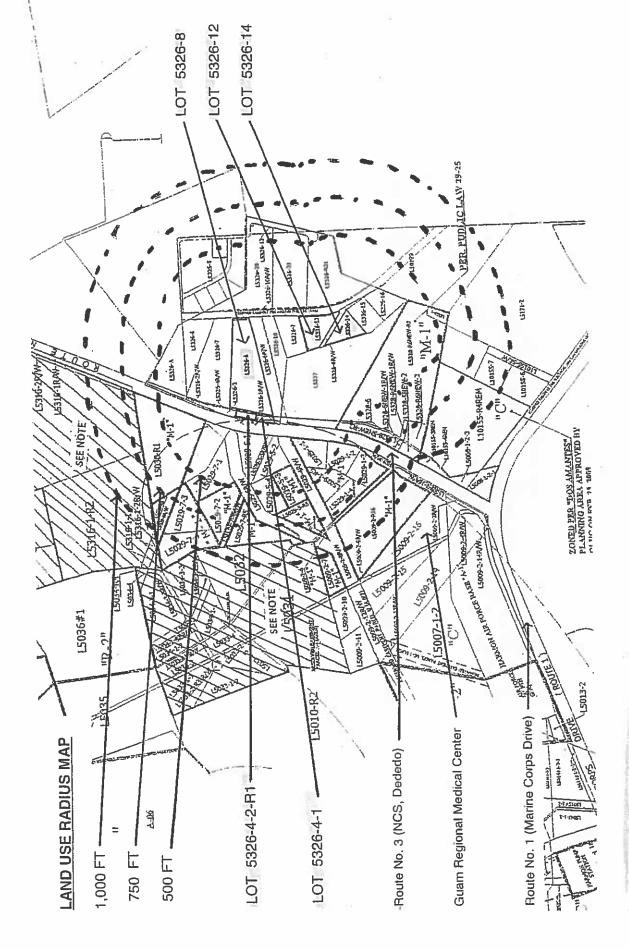
5. **RECOMMENDATION:**

In supporting of non-residential development along major routes and roads, we find the added note to the protection of the general welfare of the public was addressed for development on the subject lots. With no objections from Application Review Committee (ARC) and a favorable outcome (no objections) on the municipal hearing. As such, it is the position of DLM planning Staff that the area is best suited for industrial type uses followed by commercial activities/uses; and find it fitting to **Recommend Approval**.

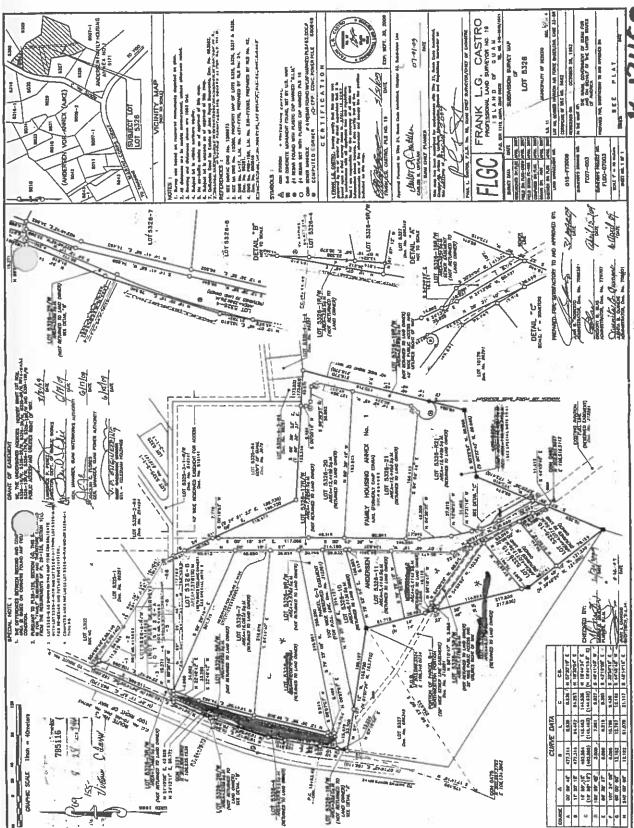
MARVIN Q. AGUILAR Guam Chief Planner

ATTACHMENTS

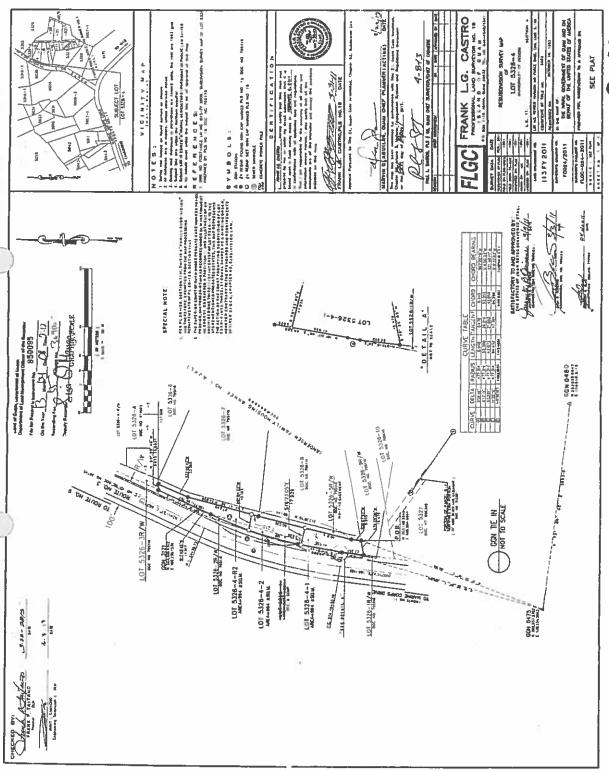
Case Planner: Penmer C. Gulac



ATTACHMENT 1- VICINITY/MAPS & RADIUS

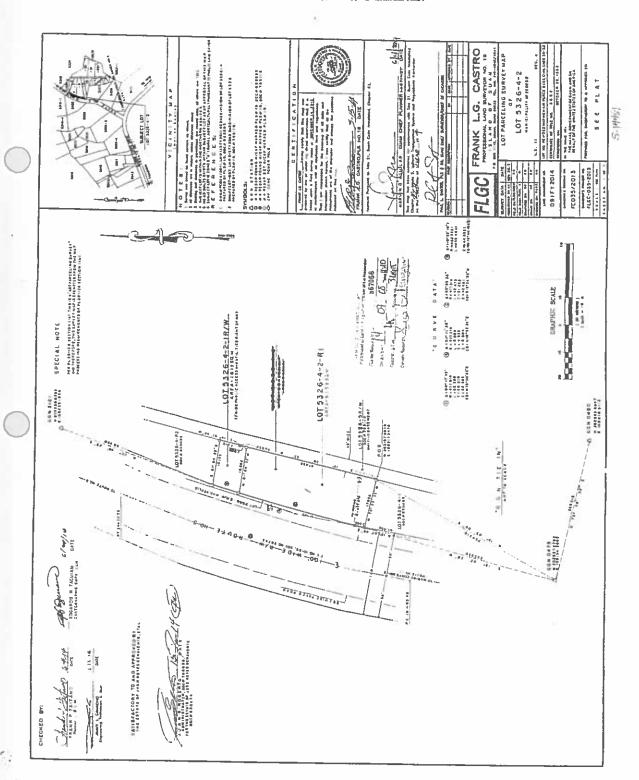


ATTACHMENT 2 (2 OF 3)



26 m 39

ATTACHMENT 2 (3 OF 3)



Street Address; 590 S. Marine Corps Drive Suite 733 ITC Building Tamuning, GU 96913

> Mailing Address: P.O. Box 2950 Hagåtňa, GU 96932

Website: http://land.quam.gov

E-mail Address:

Telephone: 671-649-LAND (5263)









MICHAEL J.B. BORJA Director

DAVID V. CAMACHO Deputy Director

RAY TENORIO Lieutenant Governor of Guam

EDDIE B. CALVO

Governor of Guarn

February 18, 2016

MEMORANDUM

TO:

Guam Land Use Commission (GLUC) Members

FROM:

Chairman, Application Review Committee (ARC)

SUBJECT: Summary of Position Statements by ARC

Re: Zone Change -

Application No. 2015-35, Goodwind Development,

Corp;

GLUC Hearing - February 25, 2016

Listed below is the compilation of Positions received from various ARC Member Agencies as submitted to Planning Division. The conditions as imposed by the ARC Member Agencies are listed when applicable.

1. DEPARTMENT OF LAND MANAGEMENT (DLM):

Recommends APPROVAL

2. BUREAU OF STATISTICS AND PLANS (BSP

The Bureau has comments with recommendations (Attached Certification).

3. DEPARTMENT OF PARK AND RECREATION/HISTORICAL PRESERVATION OFFICE (DPR/HPO):

DPR/HPO have determined that the proposed project will not affect historic properties and they have no objections to approving the subject aplication.

4. GUAM WATERWORKS AUTHORITY (GWA):

No Position Statement Received as of Staff Report Date.

5. <u>DEPARTMENT OF PUBLIC WORKS (DPW):</u>
No Objections with recommendations noted.

6. ENVIROMENTAL PROTECTION AGENCY (GEPA):
No Position Statement Received as of Staff Report Date.

Continuation of Memo

SUBJECT: Summary of Position Statements by ARC Re: Zone Change - Application No. 2015-35,

GLUC Hearing - February 25, 2016

Page 2 of 2

7. **GUAM POWER AUTHORITY (GPA):**

No Objections with recommendations and requirements noted.

8. <u>DEPARTMETN OF AGRICULTURE (DoAG):</u>

No Objections with Recommendation on AIS (Attached)

EX OFFICIO

1. **GUAM FIRE DEPARTMENT (GFD)**:

No Position Statement Received as of Staff Report Date

2. <u>GUAM ECONOMIC DEVELOPMENT AGENCY (GEDCA)</u>: NO OBJECTIONS.

3. DEPARTMENT OF EDUCATION (DOE):

Has not submitted a Position Statement as of Staff Report date.

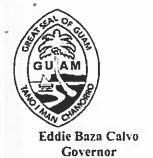
4. DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES (DPHSS):

Has not submitted a Position Statement as of Staff Report date.

Maryin Q. Aguilar Guam Chief Planner

Case Planner: Penmer Gulac

ATTACHMENTS: Position Statements as noted



Ray Tenorio

Lt. Governor

Department of Agriculture Dipåttamenton Agrikottura

Director's Office Agricultural Development Services Plant Nursery Aquatic & Wildlife Resources Forestry & Soil Resources Plant Inspection Station Animal Health 300-7970 / 7969 / 7966 300-7973 / 7972 / 7967 300-7974 735-3955/56; Fax 734-6570 300-7975/6 475-1426/27; Fax 477-9487 300-7965 Fax 734-6569



Matthew L.G. Sablan Director

> Jessie B. Palican Deputy Director

7. Gular 2/15/16 Cont plans . Dis

> Nef. GULC 2015-35

February 3, 2016 Memorandum

To:

Director, Department of Land Management

Attn:

Executive Secretary, Guam Land Use Commission and Guam Seashore

Protection Commission

From:

Director of Agriculture

Subject:

"Agricultural & Environmental Impact Statement" for a "Zone Change request on Lots 5326-8,5326-12, 5326-14 and 5326-4-2-R1 Located in NCS

Dededo from an "Agricultural to an M1" (Light Industrial). (Goodwind

Development Corp.)

Agriculture has reviewed the subject lots for a "Zone Change" request and finds that there are no major impacts to any agricultural activity. There will be some impacts to the immediate environmental and ecological habitat of the area. Our agency concerns include the loss of habitat, and the loss of indigenous tree's in this area. The benefit of these tree species is to provide habitat to indigenous and migratory bird species, support and prevent erosion by binding the soil structure in place, and to help filter and prevent contaminants from entering into our "Northern Aquifer" the source of most of our drinking water. As part of the compliance with federal mandates regarding endangered species that include those found and have been listed from Guam, we require that prior to any land clearing and other earthen work, a comprehensive biological assessment report must be completed prior to our agency signing off on the actual "Clearing, Grading and Building Permit" that is required to the commencement of any clearing.

We recommend "Best Manangement Pracitices" be incorporated into the project to mitigate the loss of flora of the area we recommend that the developer incorporate a landscaping plan that uses indigenous tree species from this area as they are adapted for the environment. Along with the native species, fruit trees can also be used to further enhance the project. By incorporating these practices the trees will aid in providing windbreaks, shading, erosion control, food sources and improvement on aesthetics for the neighborhood.

Q

Please contact our Agricultural Development Services & Forestry divisions here at the agency for further assistance and guidance at 300-7972 & 7976 respectively. Our Forestry division grows and maintains these native tree species should you choose to incorporate them into the project. Contact their office for assistance and consultation at 300-7976. Please be aware that the increased loss of Guam's native habitat contributes to a diminished capacity to sustain and support a healthy island community. It is vital that all land developers take a proactive step in preventing and causing this loss. To fully benefit and see these eco-friendly practices being used visit our Department of Agriculture Organic and Environmentally Demonstration Farm.

For questions or concerns regarding Agriculture's position please contact our office at 300-7973. Thank you in this regard.

MATTHEW L.G. SABLAN

Director



The Honorable **Eddie Baza Calvo** Governor

The Honorable Ray Tenorio Lieutenant Governor DIPATTAMENTON CHE'CHO' PUPALEKO Glenn Leon Guerrero

Director

Felix C. Benavente **Deputy Director**

October 09, 2015

MEMORANDUM

TO:

Director. Department of Land Management (DLM)

FROM:

Director

APPLICANT:

Goodwind Development Corporation

SUBJECT:

Position Statement No. 2015-35

Zone Change from "A" (Agricultural) to "M-1" (Light - Industrial) on Lot Nos. 5326-8,

5326-12, 5326-14, 5326-4-1 & 5326-4-2-R1, NCS, Dededo

Buenas yan Hafa Adai!

The applicant, Goodwind Development Corporation proposes to zone change from "A-1" to "M-1" on the above subject lots with an estimated size of 7.32 acres or 26,568,833 square meters and is within the Municipality of Dededo.

The subject lots to be rezoned are as follows: Lot 5326-8 (16,087 sq. meters). Lot 5326-12 (5,414 sq. meters) Lot 5326-14 (4,073 square meters). Lot 5326-4-1 (994 square meters) and Lot5326-4-2-R1(883 square meters) are located in Ukudo, NCS, Dededo area and approximately, 200 feet east of the New Guam Regional Medical Center Hospital. Two of the lots are fronting Route 3 and the other three lots are within the 500 feet of Route 3. The above subject lots were all part of the Federal Return of the Excess Land that the private owners have re-acquired and sold to the above applicant.

The Department of Public Works. (DPW) has completed its review of the subject application and has no objection to the requests provided the following conditions be in place:

- because of the various location of each lot, must provide signs that will serve as a landmark;
- drainage water disposal must be shown in details in the final drawings and to be supported with
- adequate egress/ ingress must be coordinated with the Division of Highways, (rights of way section):
- if the owner chooses to use solid waste disposal or any private services, the location of the trash bin container should be situated in an area that will not hinder the public rights of way.

Must comply with all the applicable rules, regulations and design drawings must meet all the requirements in conformance with the latest building code requirements prior to issuance of building permit.

Should you have any questions, please contact Mr. John F. Calanayan, Engineer in Charge or Maryrose M. Wilson, Engineer III in the Division of Capital Improvement Projects (CIP) at 646 -3189/3224.

Dangkulu na Si Yu'os Ma'ase!

Eddie Baza Calvo Governor of Guam



William M. Castro Director James T. McDonald

Deputy Director:

115 / 1 S 2015

Ray Tenorio
Lieutenant Governor

Government of Guam P.O. Box 2950 Hagåtña, Guam 96932 Tel: (671) 472-4201/3 Fax: (671) 477-1812

NOV 1 7 2015

MEMORANDUM

To:

Chairman, Guam Land Use Commission

Via:

Executive Secretary, Department of Land Management

From:

Director, Bureau of Statistics and Plans

Subject:

APPLICATION NO. 2015-35; LOCATION: Lot No. 5326-8, 5326-14, 5326-4-1, 5326-4-2-R1, NCS, Dededo; APPLICANT: Goodwind Development Corporation, c/o Harry D. Gutierrez; PROPOSED USE: Rezone property from "A" (Agriculture) to "M1" (Light-Industrial) to construct a warehouses, office spaces, and equipment

parking.

Buenas yan Hāfa Adai! The applicant, Goodwind Development Corporation represented by Harry D. Gutierrez, is requesting a zone change for Lot Nos. 5326-8, 5326-12, 5326-14, 5326-4-1, and 5326-4-2-R1 located in the Ukudo village also known as the Naval Communications Station (NCS) vicinity in the municipality of Dededo from an "A" Agricultural to "M1" Light Industrial. The request to rezone the subject lot will allow the existing vacant lots currently vegetated to become a light industrial zone to construct warehouses, offices, and parking areas on each of the five (5) lots. The subject properties and their respective size are as follows:

No.	Lot No.	Square Feet (±)	Acres (±)
1	5326-8	173,158.37	4.3
2	5326-12	58,275.5	1.45
3	5326-14	43,841.2	1.09
4	5326-4-1	10,669.28	.26
5	5326-4-2-R1	8,966.30	.22
TOTAL:		294,910.65	7.32

The surrounding land uses consist predominantly of agricultural lots; however, within the 1,000 foot radius there is a mix use of commercial, light industrial, and multi-family residential lots. The basic infrastructure of sewer, power and water are within the area.

The Bureau has completed its review of the subject application and has the following comments and recommendations:

1. **Zone Change.** The application lacks several supporting information in the zone change application as requested on page two labeled number:

5c. A detailed As-Built Plan of the lot shall include the following:
1.) Total number and types of building;

BSP Position Statement Application No. 2015-35 Page 2

- 3.) Layouts of utilities and drainage;
- 4.) Proposed lot coverage of building(s) and accessories in square meter/feet;
- 5.) Approximate gross and net densities allowed on parcel;
- 6.) Feasibility study;
- 7.) Topography;
- 8.) Existing earth faults and sinkholes;
- 9.) Water courses and lens;
- 10.) Reservation, conservation, and historic places;
- 11.) Total percentage of open spaces exclusive of parking stalls and other manmade features.

The Bureau recommends the applicant to submit the detailed information of the proposed project.

2. Agricultural District. The applicant is advised to consult with the Department of Agriculture (DOAg) to submit an Agricultural Impact Statement pursuant to 21 GCA Chapter 61 §61637 which states:

"No additional land may be established as a rural zone and no land presently zoned A may be rezoned without the Commission first having considered an agricultural impact statement which shall be submitted by the Director of the Department of Agriculture. This statement shall provide a detailed statement of:

- (a) The agricultural impact of the proposed rezoning upon the agricultural components of the Guam Master Plan.
- (b) Any adverse conservation or agricultural effects which cannot be avoided should the rezoning be approved.
- (c) The Director's opinion whether said rezoning should be approved and reasons therefore."
- 3. Water Source Protection and Stormwater Management. The applicant's properties are located in the Northern Watershed, which is home to the Northern Guam Lens Aquifer (NGLA). The aquifer is an essential resource for Guam and is the primary source of drinking water for eighty percent of the island population. Moreover, the U.S. Environmental Protection Agency has designated the NGLA as Guam's sole source aquifer. Therefore, it is of paramount importance to prevent sources of contamination from entering Guam's water supply. The primary goal for protecting the aquifer is to safeguard human health and the environment by maintaining water quality for continued use.

It is in its nature of industrial activities to produce high concentrations of pollutants, the Bureau is concerned that activities generated from these five proposed industrial sites may severely impair the water quality of the NGLA. Therefore, should this application be approved, the Bureau recommends the applicant to work closely with the Guam Environmental Protection Agency (GEPA) for an Aquifer Protection Review pursuant to the "Federal Safe Drinking Water Act," § 1424 and "Guam Safe Drinking Water Act," 10 GCA Chapter 53.

Additionally, the Bureau recommends the applicant coordinate with the Guam Waterworks Authority (GWA) for water resource conservation and ensure the NGLA is protected through compliance with the "Water Pollution Control Act," 10 GCA Chapter 47; "Water Resources Conservation Act," 22 GCA Chapter 5; 10 GCA Chapter 46, as amended by P.L. 17-87, and the Guam Water Resource Development & Operating Regulations.

- 4. **Erosion Control.** The Bureau advises the applicant to implement erosion control methods to prevent sediment from leaving the project site before, during, and after construction pursuant to the "CNMI Guam Stormwater Management Manual" and "Erosion and Sediment Control Field Guide". The applicant is advised to work with GEPA for best management practices.
- 5. Low Impact Development (LID). The LID approach works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features and minimizing the use of impervious surfaces to create functional and appealing site drainage that treats stormwater as a resource rather than a waste product. Impervious surfaces from parking stalls, driveways, and rooftops accelerate stormwater runoff. According to the National Oceanic Atmospheric Administration's (NOAA) Coastal Change Analysis Program (C-CAP), impervious surfaces in this area have increased by 5.17 percent from 2005 to 2011, while the total net loss of forest is -1.96 percent. The lots are currently 100 percent vegetated. Situated in the Northern Watershed also named Mataguac Spring-Frontal Pacific Ocean Watershed, the loss of 7.32 acres of forested area will contribute to a continued decline of forest and will increase impervious surfaces for this watershed.

The applicants are encouraged to implement LID practices such as permeable parking and walkways, grassed swales, island bio-retentions, and/or rain gardens into the landscaping design as a means to reduce runoff and control erosion from their property. An electronic file of the guidebook "Island Stormwater Practice Design Specifications" is available at the Bureau's, Guam Coastal Management Program (GCMP) office.

6. Native Flora and Fauna Protection. The Bureau recommends the applicant consult with the DOAg's Division of Forestry and Soil Resources Division and Agricultural Services Division on using native plants to avoid and/or minimize the spread of invasive species.

Additionally, the Bureau advises the applicant to consult with DOAg regarding the use of organic fertilizers or pesticides for landscaping purposes to avoid additional contaminants from entering any natural water sources or near shore waters. The applicant is encouraged to consult with GEPA regarding their Pesticide Control Program.

- 7. Entrance/Exit. The Bureau recommends the applicant to coordinate with the Department of Public Works (DPW) to determine appropriate ingress and egress as well as proper parking configuration and dimensions. Additionally, the Bureau suggests the applicants to work with DPW to ensure all building codes and regulations mandated under 21 GCA Chapter 61 of The Parking and Loading Space Regulations and 21 GCA Chapter 67 of The Building Code.
- 8. Setbacks. The Bureau recommends that proper setback requirements are followed and to include a perimeter or buffer area either through landscaping or fencing to ensure the minimum yard and lot areas is established for light industrial zones. The Bureau recommends the applicants to coordinate with the GEPA as stated in §61501 Minimum Yards and Lot Areas "(c) Lots over the aquifer. Lot sizes and set-back on properties above the aquifer shall be established by the Guam Environmental Protection Agency."
- 9. **Historic Preservation**. To preserve historic properties and artifacts, the applicants are advised to coordinate with the Department of Parks and Recreation (DPR), Guam Historic Resources Division, especially if excavation is involved.

BSP Position Statement Application No. 2015-35 Page 4

The project and the area appears to be in-line with the North and Central Land-Use Plan(NCLUP) Goal Land Use 1: "Establish land use categories that provide for a mix of residential, commercial, civic, and industrial development to meet future population and employment needs." As well as appears to be compatible with the Future Land Use Map in the NCLUP.

Considering the growing concerns of development to the environment and our community, the applicants should be required to incorporate sustainable community development as specified in the North and Central Land-Use Plan Goal Land Use 2, Policy Land Use 5 in the project specifications as well as address the recommendations of this position statement should the application be approved.

"Goal Land Use 2: Promote sustainable community development.

Policy LU-5: Promote environmental sustainability through a variety of measures. Examples of possible measures include green building design, green spaces in urban areas, green infrastructure, greenway and conservation lands networks, transitoriented and transit-ready development, improved networks for walking and wheeling, site design to promote renewable energy use, and other measures."

In light of the points presented in the application, the Bureau finds that activities of the proposed construction over a total of 7.32 acres will affect the landscape and surrounding area if measures are not in place. Furthermore, the application lacks sufficient information on the project.

As government officials, it is our primary responsibility to ensure that the construction and operations of this proposed endeavor are in a manner designed to protect the public health, safety, and to promote the public welfare and convenience. We also encourage the applicants to protect Guam's natural resources and to ensure they are used in a sustainable manner.

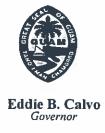
cc: GEPA DPW

GWA

DPR

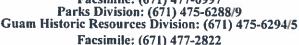
GPA

DOAg



Department of Parks and Recreation Government of Guam

490 Chalan Palasyo Agana Heights, Guam 96910 Director's Office: (671) 475-6296/7 Facsimile: (671) 477-0997 Parks Division: (671) 475-6288/9





William N. Reyes

Acting Director

OCT 0 8 2015

Ray Tenorio Lt. Governor

In reply refer to: RC2015-0923

October 06, 2015

Memorandum

To:

Executive Secretary, Guam Land Use Commission

From:

Director, Department of Parks and Recreation

Subject:

DLM Application No. 2015-35, Zone Change

Lots 5326-8, 5326-12, 5326-14, 5326-4-1, and 5326-4-2-R1

Ukudo / NCS, Municipality of Dededo

Applicant: Goodwind Dev. Corp., c/o Harry D. Gutierrez, Consultant

Case Planner: Penmer C. Gulac

We reviewed the above subject and determined that the Zone Change will not affect historic properties within the subject lots. Therefore, we have no objection to the approval of this Zone Change Application.

However, during the permitting process for the clearing/construction phase of these subject lots proposed for warehouse with office, loading, and parking area, our office will work with the applicant to comply with historic preservation requirements.

Should you have any questions, please do not hesitate to call us.

William



GUAM POWER AUTHORITY

ATURIDÅT ILEKTRESEDÅT GUAHAN P.O.BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

October 20, 2015

MEMORANDUM

Chairman, Guam Land Use Commission

Executive Secretary, Guam Land Use Commission

From:

Subject:

To:

General Manager

Lots 5326-12 & 5326-14, Municipality of Dededo, (Goodwind Development

Corporation) Zone Change Application from "A" (Agricultural) to "M-1" (Light-

Industrial) to construct a warehouse. Application No. 2015-35

Guam Power Authority has reviewed the application described above and submits the following position statement:

A. Comments and Recommendations Concerning GPA requirements:

- 1. Applicant is required to comply with the following pursuant to the National Electric Code, National Electric Safety Code and GPA's Service Rules and Regulations:
 - Coordinate overhead/underground power requirements with GPA Engineering for new structures.
 - Maintain minimum clearances as defined by the current edition of the National Electrical Safety Code and National Electrical Code.
 - Maintain adequate clearance between any structures and electric utility easements in accordance with NESC and GPA requirements.
 - Developer/Owner shall provide necessary electric utility easements to GPA prior to final connection.
 - Provide scheduling and magnitude of project power demand requirements for new loads.
 - All relocation costs for GPA's facilities, if necessary, is 100% chargeable to the applicant
 including but not limited to labor and materials.
 - GPA reserves a 5' wide reserved utility easement and a 32' Wide Public Access and Utilities Right of Way under document number 795116 on map 015 FY 2009.
- Primary distribution overhead and underground line extensions and GPA service connections must adhere to the guidelines outlined in the current issue of GPA's Service Rules and Regulations.
- A system impact assessment may be required to determine the effect of this facility on GPA's
 existing power facilities.
- All costs associated with the modification of GPA facilities shall be chargeable to the customer.
 This includes relocation costs, new installation costs and any required system upgrades.

B. General Comments

GPA has no objection to the request subject to the conditions cited above.

CJOHN M. BENAVENTE, P.E.

INFRASTRUCTURE CERTIFICATION FORM

Agency Certifying: Guam Power Authority Applicant: Goodwind Development Corporation Location: Lots 5326-12 & 5326-14, Dededo

Type of Application: Zone Change GLUC/GSPC Application No. 2015-35

Brief Project Description:

"A" to "M-1" to construct a warehouse.

For the purposes of this Certification, GOVERNMENT SERVICES, FACILITIES, and INFRASTRUCTURE include, but are not limited to: power lines poles and facilities; water lines, pumps and facilities; sewer and liquid waste disposal; storm water disposal; solid waste disposal; telephone lines and facilities; schools; health facilities; police and fire fighting service and facilities; roads; traffic and street lights; parks and recreational activities.

1.	I hereby certify that the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE are currently AVAILABLE AND IN PLACE to support this project: Yes No No		
2.	If the answer to #1 above is YES, then: I hereby certify that the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE are currently ADEQUATE to support this project:		
	Yes ☐ No ⊠		
3.	If the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE current		

3.	If the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE currently in
	place are NOT AVAILABLE or they are AVAILABLE, BUT NOT ADEQUATE, itemize the
	services, facilities and infrastructure that are needed, the estimated cost thereof and whether funds
	are currently available and identified to develop such services, facilities and infrastructure:

Services, Facilities and Infrastructure Needed	Cost of Upgrades	Funds Available	Date Available	Funds Identified
Please see comments below				

I hereby certify that the foregoing is true and correct to the best of my knowledge.

General Manager

4.

Comments:

Based on a preliminary inspection of the site, the electrical facilities may require upgrading to meet the demand of the proposed project. A system impact assessment maybe required to determine the effect of this facility on GPA's existing power distribution system. The applicant will be responsible for the cost of any required system upgrade.

Dec Block Day Du

AN APPLICATION HAS BEEN FILED WITH THE GUAM LAND USE COMMISION (GLUC) FOR A ZONE CHANGE **PUBLIC NOTICE**

APPLICATION DESCRIPTION: PROPOSE CONSTRUCTION OF WAREHOUSE, WITH OFFICE SPACE AND EQUIPMENT PARKING OWNER: GOODWIND DEVELOPMENT CORPORATION, GUAM

LOT, BLOCK, TRACT, MUNICIPALITY: LOT NOS. 5326-8, 5326-12, 5326-14, 5326-4-1 & 5326-2 R1, DEDEDO DEVELOPER: GOODWIND DEVELOPMENT CORPORATION, GUAM C/O HARRY D. GUTIERREZ, CONSULTANT

PROPOSED CHANGE OF ZONE: TO REZONE "A" (AGRICULTURAL) TO "M-1" (LIGHT-INDUSTRIAL ZONE)

PUBLIC HEARING: PLACE DEDEDO SENIOR CITIZEN, CTR

GLUC MEETING: PROL 142011 1:30 PM DLMIGLUC CONFERENCE RM. 3RD FLR ITC BLDG, TAMUNING

ATTACHMENT B



DIPĂTTAMENTON MINANEHAN TĂNO' (Department of Land Management) GUBETNAMENTON GUĀHAN (Government of Guam)



MICHAEL JB BORJA Director

DAVID V. CAMACHO **Deputy Director**



Street Address: 590 S. Marine Corps Drive Suite 733 ITC Building Tamuning, GU 96913

> Mailing Address: P.O. Box 2950 Hagåtña, GU 96932

Website: http://land.guam.gov

E-mail Address: Imdir@land.quam.gov

Telephone: 671-649-LAND (5263)

> Facsimile: 671-649-5383



EDDIE BAZA CALVO Governor

RAY TENORIO Lieutenant Governor

April 13, 2016

MEMORANDUM

TO:

Chairman, Guam Land Use Commission

FROM:

Guam Chief Planner

SUBJECT:

Amended Staff Report - Application No. 2015-39 Zone Change, Lot 5224-

1- 8-2, Tract 308 (Belo Area), Municipality of Barrigada.

PURPOSE:

A. Application Summary: The Applicant, Sin Hung Construction & Pejman Gounial (Rep), represented by Harry D. Gutierrez, is requesting the approval of a Zone Change from "A" (Agricultural) to "M-1" (Light -Industrial) Zone, in order to construct a warehouse with office space, and equipment shelter on Lot 5224-1-8-2, Tract 308, Municipality of Barrigada.

B. Legal Authority: Title 21, Guam Code Annotated, Chapter 61 Title 21. Guam Code Annotated, Chapter 61 Article 6, Part 3 (Changes of Zones), Sections 61630 thru 61638 (Zoning Law).

2. FACTS:

The subject site is fronting a 40-foot right of Location: (Duenas Street) and approximately 700 feet east of Belo Road and across WESTCO Warehousing Facility and approximately 700 feet north of Chinese Temple and approximately 1/4 mile east of Route 16 (GIAA/airport overpass) Barrigada. (See ATACHMENT).

- B. Lot Area: 1,691 square meters or 19,285 square feet or (½ Acre +)
- C. Present Zoning: A" (Agricultural) Zone.

Note: Amendments: Page 1; (2) Facts: A. Location and B. Lot Area; Page 2; Field Description, D., (3) Date of ARC; (B) Public Hearing Date, Public Hearing Minutes Attachment (Pages 1,2,3)

(AMENDED)

RE: Staff Report - Zone Change - Application No. 2015-39

GLUC Meeting Date of: April 14, 2016

Date of Preparation of Staff Report: April 13, 2016

Page 2 of 5

- **D. Field Description:** The subject lot has a small container for office and light and heavy construction equipment with a temporary shelter for company vehicles. The topography is fairly flat and slopes gradually toward the right of way (front of property). The zoning designation are "A" and "M-1" zoned lots abuts the subject on the eastern border (rezoned by GLUC November 18, 2010). There is a large warehouse owned by WESTCO Warehousing across the street (rezone to M1 by Public Law 22-16 many year ago. Other warehouses are further east and scattered on M1 lots within 200-1,300 feet and other undeveloped M1 zoned properties on the east and southeast. Other land use activities within 500 3,300 feet radius to the east are M1 zoned lots with warehouses and light and heavy equipment repair shops, sporadic residential homes and apartments along Belo Road. There's a gas station and the A.B. Won Pat International Airport (GIAA), M2 zone on the southwest. All utility infrastructures are within 100 feet of the subject development.
- E. Masterplan: Not Determined
- F. Community Design Plan: Conservation No Updated Land Use Masterplan to this date.
- G. Previous Commission Action: None.
- 3. APPLICATION CHRONOLOGICAL FACTS:
- A. Date Heard By ARC: October 1, 2015
- B. Public Hearing: January 7, 2016

The required public hearing was held at the Barrigada Mayor's Office / Community Center on January 7, 2016, at 6:05 P.M. Present were, the Case Planner, Mr. Harry D. Gutierrez, the Applicant's Rep, Mayor June Blas, Vice Mayor Jessie Bautista, a few MPC Members, neighbors and lotowners. A total of 7 persons were in attendance.

Note: Minutes of the hearing are provided in ATTACHMENT 2.

Staff Report - Zone Change - Application No. 2015-39

GLUC Meeting Date of: April 14, 2016

Date of Preparation of Staff Report: April 13, 2016

Page 3 of 5

4. STAFF ANALYSIS:

A Zone change must addressed <u>Public Necessity</u>, <u>Public Convenience</u> and <u>General Welfare</u> criteria. Our analysis is as follows:

PUBLIC NECESSITY and CONVENIENCE

(AMENDED)

The requested zone change to "Light Industrial" is a more prudent zone designation for the area. The fact that the area is at the edge of APZ-II Zone (Accident Potential Zone - II) requires a shift from residential to commercial or industrial uses notwithstanding the fact that residential uses are permitted in the current zone. The surrounding and nearby parcels have also been zoned to "Light Industrial" and industrial activities are in operation has not been a detriment to other current residential or competing commercial or industrial uses.

The "Health, Safety and General Welfare" issues, in a community's comprehensive Plan divides these categories and mandates the various governmental entities to develop plans to address such factors. For example, the government basically has several "powers" so to speak; the power of taxation, the policing powers, the power of eminent domain and the regulatory power.

In doing so, it defers the specific issues to the specific government entity mandated to oversee the technical review of a proposed plan such as for GEPA/GWA for sewer requirements (a health issue), DPW on access (a safety issue) and so forth, thus ensuring that the overall **General Welfare** of the community is not compromised.

The Commission is interested and has responsibilities to regulate zoning; and watches out for the "health, safety and welfare" of the community, but from zoning perspective. In the case at hand, the requested light industrial rezoning, is in our opinion, a much suitable zone and location for commercial or industrial uses for the primary reason that the area at the edge the AICUZ zone and in which an APZ-II factor exist based on the AICUZ study. If rezoned to Light Industrial, such zoning designation would appear to have the least impact on the "Health, Safety and General Welfare that would be more pronounced should a residential community exist.

The properties abutting and nearby are zoned Light industrial as can be noted in the 1,000' - Foot Radius map. There are construction that is ongoing or completed projects on those properties recently zone changed to M1; while older "M" zone properties have

Staff Report - Zone Change - Application No. 2015-39

GLUC Meeting Date of: April 14, 2016

Date of Preparation of Staff Report: April 13, 2016

Page 4 of 5

been operating industrially. The area is developing and growing more in the light-industrial use as opposed to residential.

(AMENDED)

The proposed rezoning for new construction of warehouse with office, a parking area for equipment are permitted light industrial uses on the subject lots that would be consistent with current land uses and activities in the immediate area within a range from 200' to 3,000' near the airport access/over pass, and along Route No. 16 and to the northeast in the Belo area and along lower Barrigada Heights area. The location is central to the Tamuning, Dededo and Yigo areas with large population. It is also in close proximity to the airport, airport industrial park, Harmon Industrial park and other commercial districts.

GENERAL WELFARE

Legitimate Agricultural activities in this area is either non-existent or negligible. While it is true that remaining parcels are still zoned "Agricultural", the prevalent use is heavy towards a more intense industrial and commercial uses; however, we do point out that there exists residential uses scattered throughout the area as well.

We received the required Agricultural Impact Statement (AIS) from Department of Agriculture and stated they do not oppose to the zone change and development with stated conditions and concerns in regard to preventing major ecological damage to the environment and the Northern Aquifer. The AIS recommendations a comprehensive landscaping plan that will be incorporated as part of the review and approval of existing or proposed development in the immediate area. Agriculture further offer assistance for proposed development. Based on existing land use of the site, appears that there are no significant impacts on agriculture (subsistence farming) and or existing lands uses in the immediate and near the proposed site.

Thus, the proposed zone change and land use development is the highest and best use for this site, is not a good site for agricultural activities. It is affected by an APZ factor of II. The propose activity on this site is more conducive for it is centrally located and near existing commercial and other light industrial properties.

Any development on the site will accommodate wastewater and storm water drainage to protect the residents and the groundwater (aquifer) in the area. The zone change will not reduce any zoning standards in the immediate vicinity, but rather, the improvements to the subject lot will create a more stable environment, that will provide for an orderly

(AMENDED)

RE: Staff Report - Zone Change - Application No. 2015-39

GLUC Meeting Date of: April 14, 2016

Date of Preparation of Staff Report: April 13, 2016

Page 5 of 5

development scheme within the area and adjacent surroundings. The Applicants are aware and will comply to all requirements and conditions and any concerns imposed by government agencies and other mandates in their development plans.

In supporting an industrial or commercial use, we find that the added note to the protection of the general welfare of the public is that the subject lot is near the airport; and that based on recent studies on noise impact in this specific area, residential development is not favorable or suitable within and or near this area which is within an area designated as Accident Potential Zone II. As such, it is the position of DLM Planning Staff that the area is best suited for industrial type uses followed by commercial activities/uses.

5. <u>RECOMMENDATION</u>: Recommend <u>Approval</u> and the applicants shall adhere to all ARC recommendations, Commission conditions and requirements.

Marvin Q. Aguilar Guam Chief Planner

ATTACHMENTS

Case Planner: Penmer C. Gulac

PUBLIC HEARING MINUTES

Page 1 of 3

The required public hearing was held at the Barrigada Mayor's Office / Community Center on Janaury 7, 2015, at 6:05 P.M. Present were, the Case Planner, Mr. Harry D. Gutierrez, the Applicant's Rep, Mayor June Blas, Vice Mayor Jessie Bautista, a few MPC Members, neighbors and lotowners. A total of 7 persons were in attendance.

The Case Planner presented the proposed project and read the positions statements from Bureau of Statistics and Plans, Guam Power Authority, Parks and Recreation/Historical Preservation Office. Mr. Harry Gutierrez highlighted details of the application and clients intentions; he discussed the time frame of the application process, proposed construction, improvements and compliance of the building code, permits required for new development on the site; access to the site and area of development to maximize the proposed use and permitted uses on the subject lot.

Public comments and concerns that were noted are as follows:

Mr. James Castro, MPC member:

He was inquired about the sewer and water connection and surface water runoff on site and how large the ponding basin will be for the development.

Response (from the Case Planner):

Public sewer and water connections are available and the proposed warehouse will be hooked up to public sewer. Commercial meters will be applied for by the applicants/owner. All public utility infrastructure is available within 100 feet. The on-site ponding basin will be in place and is subject to approval of Guam Environmental Protection Agency.

Response from Mr. Harry Gutierrez (representative):

Mr. Gutierrez responded and stated that the warehouse will be used storage and office, and house equipment under shelter will be erected as they are currently renting a warehouse in Harmon. They will fence the perimeter and will also improve the site, parking area. They have local employees and they will support the incoming military construction and private and public needs. Further stated that the applicants will improve and hardened the access and drive way to their site fronting their premises at their expense. They will apply for highway encroachment clearance/permit with DPW.

PUBLIC HEARING MINUTES

Page 2 of 3

Mr. Harry Gutierrez (representative):

Mr. Gutierrez further stated that other requirements by GovGuam agencies on this application will be complied with, and that this company already has local residents employed and will create more jobs once they have more construction contracts.

Mayor June Blas:

She stated that the municipal planning council will further review the application and will be work closely with DPW on some road widening issue, said that a safer road and access for the public is needed in this area .. she states that the MPC will further review the application and work with the consultant ..as how they have invested interests in our village and community and if they can provide assistance and work together... she further encourage the owners to come in and see mayor and staff if they have other needs.

Mr. Gutierrez (reperesentative):

He informed those in attendance that new construction permitting requirements will be adhered to... an on-site ponding basin will be coordinated with Guam EPA and on the approved location. The project will be hooked up to the sewer line and he reassured those present there will be minimal impacts to infrastructure, traffic, noise...etc... the applicants will be good neighbors..that they will landscape, fence, install security lights on the site..further stated ..other lots were rezoned to M1 in the immediate area and neighborhood. The applicants/owners will clear the site for any debri, junks, and enhanced the site. He further stated the subject lot is within the area that is progressing more toward light industrial uses, rather than residential uses. Many of the lots were rezoned to M1 in the last 20 years by the Legislature as well as the Guam Land Use Commission (GLUC).

Planning Staff Summary of Public Hearing:

After discussion on rezoning and information given by the consultant, and clarification of the access, attendees were agreeable on the fact that majority of their concerns, frustrations, and objections were of the traffic/access on Belo Road. The road and others nearby has not been improved by the government...and issues on re-alignment of the narrow roads that commuters traverse on a daily basis on or along Belo road and nearby public access roads, planning staff encouraged lotowners to be proactive in resolving property issues and that they need to work with the village mayor and her staff...the will assist and coordinate with DPW Highways and Right-of Ways section on subject matter.

PUBLIC HEARING MINUTES

Page 3 of 3

There were no objections on the proposed rezoning at the hearing by those in attendance. Planning Staff reminded the Mayor to provide a Municipal Planning Council Resolution prior to the Land Use Commission hearing.

Planning informed those in attendance that the Application Review Committee (ARC) had no objections on the application. The next hearing will be with the Guam Land Use Commission (GLUC), ITC Building, and will be announced in the daily newspaper circulation 10 days prior to the hearing date and time.

There hearing was adjourned at 6:35 p.m.

Public Notice

AN APPLICATION HAS BEEN FILED WITH THE GUAM LAND USE COMMISSION GLOGIFOR A ZONE CHANGE

APPLICATION DESCRIPTION: PROPOSED CONSTRUCTION OF A WAREHOUSE AND GOVERED SHELTERISTRUCTURE FOR LIGHT - AND HEAVY EQUIPMENT ON SUBJECT LOT
OWNER: SIN-HUNG CONSTRUCTION CORPORATION & PEJMAN GOUNIAL (REPRESENTATIVE)

DEVELOPER: SIN-HUNG CONSTRUCTION CORPORATION & PEJMAN GOUNTIAL (REPRESENTATIVE)

LOT, BLOCK, TRACT, MUNICIPALITY: LOT 5224-1-8-2, TRACT 308, BARRIGADA

PROPOSED CHANGE OF ZONE: TO REZONE "A" (AGRIGULTURAL) TO "M-1" (LIGHT-INDUSTRIAL) ZONE

PUBLIC MEARING: JAN-7 2016 6:00 PM

GUCMEETING ANFRIL 14,2016 1:30

PLAGE: BARRIGADA MAYOR'S OFFICE! COMMUNITY CTR.

DLM/@LUC CONFERENCE RM, 3RD FLR ITC BLDG, TAMUNING

Street Address: 0 S. Marine Corps Drive Suite 733 ITC Building Tamuning, GU 96913

Mailing Address: P.O. Box 2950 Hagatña, GU 96932

Website: http://land.guam.gov

E-mail Address: Ilmdir@land.guam.gov

Telephone: 671-649-LAND (5263)

> Facsimile: 671-649-5383





DIPÄTTAMENTON MINANEHAN TÅNO' (Department of Land Management) GUBETNAMENTON GUÄHAN (Government of Guahan)



RAY TENORIO Lieutenant Governor of Guahan DAVID V. CAMACHO Deputy Director

April 6, 2016

MEMORANDUM

TO:

Guam Land Use Commission (GLUC) Members

FROM:

Chairman, Application Review Committee (ARC)

SUBJECT: Summary of Position Statements by ARC

Re: Zone Change - Application No. 2015-39,

GLUC Hearing - April 14, 2016

Listed below is the compilation of Positions received from various ARC Member Agencies as submitted to Planning Division. The conditions as imposed by the ARC Member Agencies are listed when applicable.

1. DEPARTMENT OF LAND MANAGEMENT (DLM):

Recommends APPROVAL

BUREAU OF STATISTICS AND PLANS (BSP 2.

The Bureau has comments with recommendations (Attached Certification).

3. DEPARTMENT OF PARK AND RECREATION/HISTORICAL PRESERVATION OFFICE (DPR/HPO):

DPR/HPO have determined that the proposed project has low probability that cultural resource will be present in the area. They have no objections to approving the subject application.

4. **GUAM WATERWORKS AUTHORITY (GWA):**

No Objection with recommendations noted.

5. **DEPARTMENT OF PUBLIC WORKS (DPW):**

No Objections with recommendations noted.

Summary of Position Statements by ARC
Re: Zone Change - Application No. 2015-39,
GLUC Hearing - April 14, 2016
Page 2 of 2

- 6. ENVIROMENTAL PROTECTION AGENCY (GEPA):
 No Position Statement Received as of Staff Report Date.
- 7. **GUAM POWER AUTHORITY (GPA):**

No Objections with recommendations and requirements noted.

8. <u>DEPARTMETN OF AGRICULTURE (DoAG):</u>

No Objections with Recommendation on AIS (Attached)

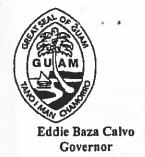
EX OFFICIO

- GUAM FIRE DEPARTMENT (GFD):
 No Position Statement Received as of Staff Report Date
- 2. <u>GUAM ECONOMIC DEVELOPMENT AGENCY (GEDCA)</u>: NO OBJECTIONS.
- DEPARTMENT OF EDUCATION (DOE):
 Has not submitted a Position Statement as of Staff Report date.
- 4. <u>DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES (DPHSS)</u>: Has not submitted a Position Statement as of Staff Report date.

Marvin Q. Aguilar Guam Chief Planner

Case Planner: Penmer Gulac

ATTACHMENTS: Position Statements as noted



Ray Tenorio Lt. Governor

Department of Agriculture Dipåttamenton Agrikottura

Director's Office
Agricultural Development Services
Plant Nursery
Aquatic & Wildlife Resources
Forestry & Soil Resources
Plant Inspection Station
Animal Health

300-7970 / 7969 / 7966 300-7973 / 7972 / 7967 300-7974 735-3955/56; Fax 734-6570 300-7975/6 475-1426/27; Fax 477-9487 300-7965 Fax 734-6569 Ref 2015-39

Matthew L.G. Sablan Director

Jessie B. Palican Deputy Director

March 30, 2016 Memorandum

To:

Director, Department of Land Management

Attn:

Executive Secretary, Guam Land Use Commission and Guam Seashore

Protection Commission

From:

Director of Agriculture

Subject:

"Agricultural and Environmental Impact Statement" for a Zone change request on Lot 5224-1-8-2 Tract 308 Located in the Belo area of Lower Barrigada (Sin Hun Construction c/o Harry Gutierrez (119 Gutierrez Way

Agana Heights, Guam 96910).

Agriculture has reviewed the subject lot for a "Zone Change" request and does not oppose the development provided the following conditions and concerns are met to prevent major ecological damage to include erosion and leaching of industrial and other chemicals and liquids associated with this type of zoning and usage. The removal of Guam's vegetation of its indigenous flora and fauna species creates the loss of the benefits that these species provide to our island such as sedimentation control and soil system preservation. It is therefore vital that a comprehensive Landscaping Plan that incorporates the use of Indigenous and or fruit and ornamental varieties of trees that will help restore capabilities of this micro and macro ecosystem. As Guam looses native habitat to increased development it is imperative that any future development replace and preserve these species that provide a valuable resource that protects important ecological habitat and the "Northern Aquifer" the primary source of drinking water for the island. As these trees disappear the function they perform in preventing erosion and filtering contaminants from entering the aquifer and coastal systems is lost. By replanting and ensuring that a healthy strand of these trees are in place the developer takes an important step in protecting our resources. In addition to these benefits of a landscaping plan the trees will also provide windbreak capabilities, shading, filtration system, habitat for indigenous and migratory species of birds and the overall aesthetic visual improvement appeal rather than just a concrete jungle.

Our Forestry division grows and maintains these native tree species should you choose to incorporate them into the project. Contact Justin Santos and Christine Fejeran at 300-7976/7 for assistance and consultation at 300-7976. For assistance in using fruit and ornamental tree species contact our Agricultural Development Services where we maintain an Organic and Environmental Demonstration Farm that showcases proper erosion control measures using trees. In addition vetiver grass that can also aid in erosion control can be made available to clientele upon consultation.

For other questions or concerns regarding Agriculture's position please contact our office at 300-7973. Thank you in this regard.

MATTHEW L.G. SABLAN

Director



RECEIVED 12/10/2015 PLANDING

GUAM WATERWORKS AUTHORITY

Gloria B. Nelson Public Service Building 688 Route 15, Mangilao, Guam 96913

DEC 1 1 2015

Department of Land Manager Tirrie 1 1/1 Inti Ur

Recvo 11/30/1

MEMORANDUM

November 25, 2015

TO:

Director, Department of Land Management

FROM:

Greg P. Cruz, Acting General Manager

SUBJECT:

Position Statement on Zone Change Application No. 2015-

39 for Lot 5224-1-8-2, Tract 308, in the Municipality of

Barrigada.

APPLICANT:

Sin-Hung Construction Corporation, Guam & Pejman

Gounial (Rep)

The Guam Waterworks Authority (GWA) has reviewed the applicant's request to change the subject property zoning from "A" (Agricultural) to "M-1" (Light-Industrial) Zone to construct a warehouse, office spaces, and equipment shelter on Lot 5224-1-8-2, Tract 308, in the Municipality of Barrigada.

This memorandum shall serve as GWA's position statement to the zone change request related to the availability of water and sewer infrastructures to serve the above subject lot. This position statement shall not be construed as notice that water and sewer systems have the capabilities to accommodate the proposed development including fire flow without on-site or off-site improvements. Any extension of the water and sewer systems and/or capacity upgrades required to serve property shall be subject to the rules and regulations of GWA. Any required extension to the existing facilities to serve the subject properties shall be at expense of the applicant.

Given the information provided in the application and existing conditions observed in the field, the following is GWA's position on the zone change application:

Page 2
GWA Position Statement
ARC Application No. 2015-39
Applicant: Sin-Hung Construction Corporation, Guam & Pejman Gounial (Rep)

- Existing water and sewer lines are located along Duenas Road. GWA
 recommends coordination with the GWA Engineering Department well in
 advance of the building permit application submittal including, verification
 of backflow preventer requirements. Backflow preventers are required for
 non-residential activities.
- Discussions with the GWA Engineering Department shall include the estimated water demand and sewer production calculations in order to determine if the existing water and sewer systems can support the proposed development.
- 3. If water and sewer infrastructure facilities are installed by the developer, they will require prior approval and shall be subject to inspection by GWA.
- 4. The applicant shall install the water meters in the right of way or easement. If an existing meter is already present, it must be in compliance with the GWA Rules and Regulations.
- 5. If the development will include a food preparation facility, then a grease trap shall be required.
- 6. New development is subject to water and/or sewer system development charges (SDC).

This GWA Position Statement shall remain valid for 365 calendar days from the date of this response. Please contact the GWA Engineering Division regarding water and sewer system improvement design and construction standards and procedures. For additional information please contact Mauryn McDonald, Permits and New Area Development Supervisor, at 300-6054.



GUAM POWER AUTHORITY

ATURIDĀT ILEKTRESEDĀT GUAHAN P.O.BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

October 19, 2015

MEMORANDUM

To:

Chairman, Guam Land Use Commission

Executive Secretary, Guam Land Use Commission

From:

General Manager

Subject:

Lots 5224-1-8-2, Tract 308, Municipality of Barrigada, (Sin-Hung Construction

Corporation); Zone Change Application from "A" (Agricultural) to "M-1" (Light-

Industrial) to construct a warehouse. Application No. 2015-39

Guam Power Authority has reviewed the application described above and submits the following position statement:

A. Comments and Recommendations Concerning GPA requirements:

- 1. Applicant is required to comply with the following pursuant to the National Electric Code, National Electric Safety Code and GPA's Service Rules and Regulations:
 - Coordinate overhead/underground power requirements with GPA Engineering for new
 - Maintain minimum clearances as defined by the current edition of the National Electrical Safety Code and National Electrical Code.
 - Maintain adequate clearance between any structures and electric utility easements in accordance with NESC and GPA requirements.
 - Developer/Owner shall provide necessary electric utility easements to GPA prior to final connection.
 - Provide scheduling and magnitude of project power demand requirements for new loads.
 - All relocation costs for GPA's facilities, if necessary, is 100% chargeable to the applicant including but not limited to labor and materials.
- 2. Primary distribution overhead and underground line extensions and GPA service connections must adhere to the guidelines outlined in the current issue of GPA's Service Rules and Regulations.
- 3. A system impact assessment may be required to determine the effect of this facility on GPA's existing power facilities.
- 4. All costs associated with the modification of GPA facilities shall be chargeable to the customer. This includes relocation costs, new installation costs and any required system upgrades.

B. General Comments

GPA has no objection to the request subject to the conditions cited above.

S JOHN M. BENAVENTE

INFRASTRUCTURE CERTIFICATION FORM

Agency Certifying: Guam Power Authority
Applicant: Sin-Hung Construction Corporation
Location: Lots 5224-1-8-2, Tract 308, Barrigada

Type of Application: Zone Change GLUC/GSPC Application No. 2015-39

Brief Project Description:

"A" to "M-1" to construct a warehouse.

For the purposes of this Certification, GOVERNMENT SERVICES, FACILITIES, and INFRASTRUCTURE include, but are not limited to: power lines poles and facilities; water lines, pumps and facilities; sewer and liquid waste disposal; storm water disposal; solid waste disposal; telephone lines and facilities; schools; health facilities; police and fire fighting service and facilities; roads; traffic and street lights; parks and recreational activities.

t _{ic}	I hereby certify that the req INFRASTRUCTURE are of Yes		LE AND IN PLA		project:
2.	If the answer to #1 above is YES, then: I hereby certify that the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE are currently ADEQUATE to support this project:				
Yes 🗌		No			
3. If the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE current place are NOT AVAILABLE or they are AVAILABLE, BUT NOT ADEQUATE, itemize to services, facilities and infrastructure that are needed, the estimated cost thereof and whether fur- are currently available and identified to develop such services, facilities and infrastructure:				itemize the hether funds	
Services	s, Facilities and	Cost of Upgrades	Funds	Date Available	Funds
Infrastru	ucture Needed		Available		Identified
Please s	ee comments below				

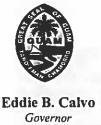
I hereby certify that the foregoing is true and correct to the best of my knowledge.

MM. BENAVENTE, P.E.

General Manager

Comments:

Based on a preliminary inspection of the site, the electrical facilities <u>may</u> require upgrading to meet the demand of the proposed project. A system impact assessment maybe required to determine the effect of this facility on GPA's existing power distribution system. The applicant will be responsible for the cost of any required system upgrade.



Ray Tenorio

Department of Parks and Recreation Government of Guam

490 Chalan Palasyo Agana Heights, Guam 96910 Director's Office: (671) 475-6296/7 Facsimile: (671) 477-0997 Parks Division: (671) 475-6288/9

Guam Historic Resources Division: (671) 475-6294/5

Facsimile: (671) 477-2822

TO THE WAY OF THE PARTY OF THE

Robert S. Lizama
Acting Director

William N. Reyes

NOV 1 6 2015

February diant Maragemen

In reply refer to: RC2015-0926

November 12, 2015

To:

Executive Secretary, Guam Land Use Commission

From:

Director, Department of Parks and Recreation

Subject:

DPR Position Statement on: DLM Application No. 2015-39 Zone Change for Lot

5224-1-8-2, Tract 308, Barrigada, for Sin-Hung Construction Corporation, Guam &

Pejman Gounial (REP), c/o Harry Gutierrez

We reviewed the subject application, submitted by Consultant, Harry D. Gutierrez, on behalf of the applicants, Sin-Hung Construction Corporation, Guam & Pejman Gounial (Rep), owner of subject lot. The applicants are requesting a rezone of their lot, from "A" (Agricultural) to "M-1" (Light-Industrial) in order to be compatible with the same zone within the vicinity.

The subject lot, consisting of 1,791.63 square meters, is in the Bello area of Lower Barrigada, and the surrounding area is predominately of M-1 zone compatible uses. Based on our archaeological knowledge of the area, and although the property has a low to no probability that cultural resources will be present the area will be subject to inspection should any development or unforeseen events occur. In light of the above, we have no objection to the approval of subject application.

If you have any questions with regards to our position, please contact our office at 475-6339.

Robert S. Lizama

Acting

Cc: Harry D. Gutierrez, Consultant/Representative



The Honorable
Eddie Baza Calvo
Governor

The Honorable Ray Tenorio Lieutenant Governor Department of Land Management

Ublic works
PATTAMENTON CHETCHO PUPBLEKO
Glenn Leon Guerrero
Director
Felix C. Benavente
Deputy Director

10-15-15

October 09, 2015

MEMORANDUM

TO:

Director, Department of Land Management (DLM)

FROM:

Director

APPLICANT:

Sin-Hung Construction

SUBJECT:

Position Statement No. 2015-39

Zone Change from "A" (Agricultural) to "M-1" (Light Industrial) Zone on

Lot 5224-1-8-2, Tract 308, Barrigada

Buenas yan Hafa Adai!

The applicant, Sin-Hung Construction proposes to zone change from "A-1" to "M-1" on the above subject lot with an estimated area of 1,791 square meters or 19, 285 square feet and is located in the Belo road area, lower Barrigada. The proposed warehouse and a small office on the property would be consistent with the current land uses in the immediate area and is within the radius of 100 to 3,000 feet and is within the Municipality of Barrigada.

The Department of Public works, (DPW) has completed its review of the subject application and has no objection to the requests provided the following conditions be in place:

- adequate egress/ingress must be wide enough for the entry/exit of heavy equipment;
- if the existing metal container will be utilize as an office space, this must be mounted and vaulted in a concrete pad for safety.

Must comply with all the applicable rules, regulations and design drawings must meet all the requirements in conformance with the latest building code requirements prior to issuance of building permit.

Should you have any questions, please contact Mr. John F. Calanayan, Engineer in Charge or Maryrose M. Wilson, Engineer III in the Division of Capital Improvement Projects (CIP) at 646-3189/3224.

Dangkulu na Si Yu'os Ma'ase!

GLENN LEON GUERRERC

Eddie Baza Calvo Governor of Guam



A A

Ray Tenorio
Lieutenant Governor

Government of Guam P.O. Box 2950 Hagåtña, Guam 96932 Tel: (671) 472-4201/3 Fax: (671) 477-1812

William M. Castro
Director

James T. McDonald
Deputy Director

JEC 0 4 2015

MEMORANDUM

To:

Chairman, Guam Land Use Commission

Via:

Executive Secretary, Department of Land Management

From:

Director, Bureau of Statistics and Plans

Subject:

APPLICATION NO. 2015-39; LOCATION: Lot No. 5224-1-8-2, Tract 308, Barrigada; APPLICANT: Sin-Hung Construction Corporation, c/o Harry D. Gutierrez; PROPOSED USE: Rezone property from "A" (Agriculture) to "M1"

(Light-Industrial) to construct a warehouse, office spaces, and equipment shelter.

Buenas yan Håfa Adai! The applicant, Sin-Hung Construction Corporation represented by Harry D. Gutierrez, is requesting a zone change for Lot No. 5224-1-8-2, Tract 308 located in the Belo area in the municipality of Barrigada from an "A" Agricultural to "M1" Light Industrial. The request to rezone the subject lot will allow the existing lot currently with a container house and a tin-covered vehicle shelter to become a light industrial zone. The project proposes to construct a warehouse, offices, and equipment shelter for permitted uses in an M1 zone. The subject property has an area of 19, 285 (±) square feet or a total of 0.44 (±) acre. The basic infrastructure of sewer, power and water are within the area.

The Guam Resource Environmental Assessment Tool Map identifies the surrounding land zones to be agricultural lots with Government of Guam lands directly abutting the subject property. However, within the 500-1,000 foot radius there are several lots designated light industrial to include the property directly across the subject lot.

The Bureau has completed its review of the subject application and has the following comments and recommendations:

1. **Zone Change.** The application lacks the following as required by GLUC Form 02- Revised April 2010:

5e. A detailed As-Built Plan of the lot shall include the following:

- 1.) Total number and types of building;
- 3.) Layouts of utilities and drainage;
- 4.) Proposed lot coverage of building(s) and accessories in square meter/feet;
- 5.) Approximate gross and net densities allowed on parcel;

- 6.) Feasibility study;
- 7.) Topography;
- 8.) Existing earth faults and sinkholes;
- 9.) Water courses and lens;
- 10.) Reservation, conservation, and historic places;
- 11.) Total percentage of open spaces exclusive of parking stalls and other manmade features.

The Bureau recommends the applicant submit the detailed information as required.

 Agricultural District. The applicant is advised to consult with the Department of Agriculture (DOAg) on an Agricultural Impact Statement pursuant to 21 GCA Chapter 61 §61637 which states:

"No additional land may be established as a rural zone and no land presently zoned A may be rezoned without the Commission first having considered an agricultural impact statement which shall be submitted by the Director of the Department of Agriculture. This statement shall provide a detailed statement of:

- (a) The agricultural impact of the proposed rezoning upon the agricultural components of the Guam Master Plan.
- (b) Any adverse conservation or agricultural effects which cannot be avoided should the rezoning be approved.
- (c) The Director's opinion whether said rezoning should be approved and reasons therefore."

The Bureau recommends the applicant submit the Agricultural Impact Statement as required.

3. Water Source Protection from Industrial Waste. The applicant's property is located on the Northern Guam Lens Aquifer (NGLA). The NGLA is an essential resource for Guam and is the primary source of drinking water for eighty percent of the island population. Moreover, the U.S. Environmental Protection Agency has designated the NGLA as Guam's sole source aquifer. Therefore, it is of paramount importance to prevent sources of contamination from entering Guam's water supply. The primary goal for protecting the aquifer is to safeguard human health and the environment by maintaining water quality for continued use.

The Bureau is concerned that industrial activities would have an adverse effect to Guam's sole source aquifer. The applicant is advised to consult with the Guam Environmental Protection Agency (GEPA) to:

1.) Implement practices for managing industrial waste to avoid potential contamination and ensure long term protection pursuant to the "Resource Conservation and Recovery Act of 1976". Practices may include the following, but are not limited to:

- a. Keeping a spill kit close to where spills are likely and ensure all staff know how to use it;
- b. Mopping the workshop floor rather than hosing
- c. Surrounding storage areas with containment berms to control leaks or spills; and
- d. Employee training to manage waste and materials properly.
- 2.) Comply with an Aquifer Protection Review pursuant to the "Federal Safe Drinking Water Act," § 1424 and "Guam Safe Drinking Water Act," 10 GCA Chapter 53.

Additionally, the Bureau recommends the applicant coordinate with the Guam Waterworks Authority (GWA) for water resource conservation and ensure the NGLA is protected through compliance with the "Water Pollution Control Act," 10 GCA Chapter 47; "Water Resources Conservation Act," 22 GCA Chapter 5; 10 GCA Chapter 46, as amended by P.L. 17-87, and the Guam Water Resource Development & Operating Regulations.

4. Stormwater Management. The project does not have a layout or a drainage plan. Industrial activities can produce high concentrations of pollutants. Industrial sites are classified as stormwater hotspots which is defined in the CNMI Guam Stormwater Management Manual as "a land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxins than are found in typical stormwater runoff, based on monitoring studies." The Bureau is concerned that activities generated from this proposed industrial site may severely impair the water quality of the NGLA.

Additionally, according to "Stormwater Treatment Practice Criteria and Standards" chapter 2 in the CNMI Guam Stormwater Management Manual:

- 1. "...stormwater runoff from hotspots cannot be allowed to infiltrate into groundwater without prior water quality treatment."
- 2. "...a greater level of stormwater treatment is needed at hotspot sites to prevent pollutant wash off after construction. This will involve preparing and implementing a stormwater pollution prevention plan (SWPPP) that involves a series of operational practices at the site that reduce the generation of pollutants from a site or prevent contact of rainfall with the pollutants."

Therefore, should this application be approved, the Bureau recommends the applicant to consult with the GEPA on creating a SWPP and install appropriate stormwater methods that will address runoff and hazardous waste.

5. Erosion Control. The Bureau advises the applicant to implement erosion control methods to prevent sediment from leaving the project site before, during, and after construction pursuant to the CNMI Guam Stormwater Management Manual and Erosion and Sediment

Control Field Guide. The applicant is advised to work with GEPA for best management practices.

6. Low Impact Development (LID). The LID approach works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features and minimizing the use of impervious surfaces to create functional and appealing site drainage that treats stormwater as a resource rather than a waste product. Impervious surfaces from parking stalls, driveways, and rooftops accelerate stormwater runoff. According to the National Oceanic Atmospheric Administration's (NOAA) Coastal Change Analysis Program (C-CAP), impervious surfaces in this watershed classified as the Mataguac Spring-Frontal Pacific Ocean Watershed have increased by 5.17 percent from 2005 to 2011, while the total net loss of forest is -1.96 percent. The new construction of warehouse, storage, and offices will increase impervious surfaces for this watershed.

The applicants are encouraged to implement LID practices such as permeable parking and walkways, grassed swales, island bio-retentions, and/or rain gardens into the landscaping design as a means to reduce runoff and control erosion from their property. An electronic file of the guidebook *Island Stormwater Practice Design Specifications* is available at the Bureau's, Guam Coastal Management Program (GCMP) office.

- 7. Native Flora and Fauna Protection. The Bureau recommends the applicant consult with the DOAg's Division of Forestry and Soil Resources Division and Agricultural Services Division on using native plants to avoid and/or minimize the spread of invasive species. Additionally, the Bureau advises the applicant to consult with DOAg regarding the use of organic fertilizers or pesticides for landscaping purposes to avoid additional contaminants from entering any natural water sources or near shore waters. The applicant is encouraged to consult with GEPA regarding their Pesticide Control Program.
- 8. Entrance/Exit. The Bureau recommends the applicant to coordinate with the Department of Public Works (DPW) to determine appropriate ingress and egress as well as proper parking configuration and dimensions. Additionally, the Bureau suggests the applicants to work with DPW to ensure all building codes and regulations mandated under 21 GCA Chapter 61 of "The Parking and Loading Space Regulations" and 21 GCA Chapter 67 of "The Building Code".
- 9. Setbacks. The Bureau recommends that proper setback requirements are followed and to include a perimeter or buffer area either through landscaping or fencing to ensure the minimum yard and lot areas is established for light industrial zones. The Bureau recommends the applicants to coordinate with the GEPA as stated in §61501 Minimum Yards and Lot Areas "(c) Lots over the aquifer. Lot sizes and set-back on properties above the aquifer shall be established by the Guam Environmental Protection Agency."

10. Historic Preservation. To preserve historic properties and artifacts, the applicants are advised to coordinate with the Department of Parks and Recreation (DPR), Guam Historic Resources Division, especially if excavation is involved.

The project and the area appears to be in line with the North and Central Guam Land Use Plan (NCGLUP) Goal Land Use 1: "Establish land use categories that provide for a mix of residential, commercial, civic, and industrial development to meet future population and employment needs." As well it appears to be compatible with the Future Land Use Map in the NCGLUP.

Considering the growing concerns of development to the environment and our community, the applicant should be required to incorporate sustainable community development as specified in the NCGLUP Goal Land Use 2, Policy Land Use 5 in the project specifications as well as address the recommendations of this position statement should the application be approved.

"Goal Land Use 2: Promote sustainable community development.

Policy LU-5: Promote environmental sustainability through a variety of measures. Examples of possible measures include green building design, green spaces in urban areas, green infrastructure, greenway and conservation lands networks, transit-oriented and transit-ready development, improved networks for walking and wheeling, site design to promote renewable energy use, and other measures."

In light of the points presented in the application, the Bureau finds that the proposed project will affect the landscape, water quality, and surrounding area if best management measures conducive to industrial uses are not in place. Furthermore, the application lacks sufficient information on the project.

As government officials, it is our primary responsibility to ensure that the construction and operations of this proposed endeavor are in a manner designed to protect the public health, safety, and to promote the public welfare and convenience. We also encourage the applicants to protect Guam's natural resources and to ensure they are used in a sustainable manner.

WILLIAM M. CASTRO

cc: GEPA DPW

GWA

DPR

GPA

DOAg



EDDIE BAZA CALVO Governor

RAY TENORIO Lieutenant Governor DIPÅTTAMENTON MINANEHAN TÅNO'
(Department of Land Management)
GUBETNAMENTON GUÅHAN
(Government of Guam)



MICHAEL J.B. BORJA Director

DAVID V. CAMACHO Deputy Director

April 1, 2016

Memorandum

TO:

Chairman, Guam Land Use Commission

FROM:

Guam Chief Planner

SUBJECT:

Staff Report - Application No. 2008-78G Request for Issuance of Seventh

Supplementary Final Public Report

RE:

Happy Condo – Registration Number 160

1. PURPOSE:

A. Application Summary: Karen Young S. Kim, represented by Melinda C. Swavely, Esq. request for a Seventh Supplementary Final Public Report for "Happy Condo", on Lot 10, Block 1, in the Municipality of Tamuning, in an "R-2" (Multi-Family Dwelling) zone, HPR Registration No. 160, under application No. 2008-78G, pursuant to §45101 to §45155, Chapter 45, Horizontal Property Regime Act.

B. Legal Authority: Title 21, GCA (Real Property), Chapter 45 (Horizontal Property Act), §45154, Automatic Expiration of Public Reports.

2. FACTS:

- A. Pursuant to §45154 of Chapter 45, Title 21, GCA, all public reports expire thirteen (13) months after the date of issuance of said public report. The Commission approved and issued the Final Public Report for "Happy Condo" August 14, 2007 and with an expiration date of September 14, 2009. (Reference Instrument No. 780259 dated October 3, 2008).
- **B.** First Supplementary Final Report was issued on September 24, 2009, expiring on October 24, 2010. (Reference Instrument No. 796768 dated September 2, 2009).
- C. Second Supplementary Final Report was issued on June 13, 2011, expiring on November 24, 2012. (Reference Instrument No. 822857 dated June 6, 2011).

Mailing Address: P.O. Box 2950 Hagatña, GU 96932

Street Address:

590 S. Marine Corps Drive

Suite 733 ITC Building

Tamuning, GU 96913

Website: http://dlm.guam.gov

E-mail Address: dlmdir@land.guam.gov

Telephone: 671-649-LAND (5263)





- D. An Amended Second Supplementary Final Report was issued with a new expiration date of November 24, 2011. (Reference Instrument No. 844836 dated December 3, 2012).
- E. Third Supplementary Final Report was issued on November 8, 2012, expiring on December 24, 2012. (Reference Instrument No. 844936 dated December 5, 2012.
- F. Fourth Supplementary Final Report was issued on December 24, 2012, expiring on January 24, 2014. (Reference Instrument No. 845124 dated December 11, 2012).
- G. Fifth Supplementary Final Public Report was issued on February 13, 2014, and expiring on March 13, 2015. (Reference Instrument No. 862339 dated March 5, 2014).
- H. Sixth Supplementary Final Public Report was issued on February 26, 2015, expiring on March 26, 2016 (Reference Instrument No. 875876 dated March 13, 2015).
- Units A and B of the Project have been sold. The developer wishes to continue sale
 of the remaining units, unit C and unit D, thus, her request for a Seventh
 Supplementary Final Public Report.
- J. Changes to Original Project. The Developer has refinanced the mortgage on the property. The following prior mortgages and assignments of rental income have been released: 1) Mortgage dated and recorded on November 30, 2007 under Instrument No. 765246, executed by Sung Min Choi in favor of Citizens Security Bank (Guam), Inc. in the principal amount of \$99,000.00, plus interest; 2) Assignment of Rents dated and recorded November 30, 2007, under Instrument No. 765247, executed by Sung Min Choi, assignor to Citizens Security Bank (Guam) Inc., Its Successors and/or Assigns, assignee; 3) Mortgage dated and recorded on January 22, 2008, under Instrument No. 767754, executed by Sung Min Choi in favor of Citizens Security Bank (Guam), Inc. in the principal amount of \$150,000.00, plus interest; and 4) Assignment of Rents dated and recorded January 22, 2008, under Instrument No. 767755, executed by Sung Min Choi, assignor to Citizens Security Bank (Guam) Inc., Its Successors and/or Assigns, assignee.

The project is now subject to the following mortgage and assignment of rental income: 1) Mortgage dated and recorded on May 31, 2012 under Instrument No. 837301, executed by Karen Young Sook Kim in favor of Bank of Hawaii in the principal amount of \$230,000.00, and; 2) Assignment of Rental Income dated and recorded May 31, 2012, under Instrument No. 837302, executed by Karen Young Sook Kim, Assignor to Bank of Hawaii, Assignee. Developer will obtain a partial release of the above referenced Real Property Mortgage and Assignment of Rental Income from Bank of Hawaii for each unit at the time of conveyance of such unit.

Staff Report – Request for Issuance of Seventh (7th) Supplementary Final Public Report "Happy Condo" (HPR Registration No. 160) Page 3 of 3

3. STAFF RECOMMENDATION: Recommend issuance of a Seventh (7th) Supplementary Final Public Report for the developer to continue to sell the remaining 2 condominium units, and pursuant to §45154 of Chapter 45, Title 21 the issuance of this Seventh Supplementary Final Public Report is for a period of thirteen months to end on May 14, 2017.

Marvin Q. Aguilar Chief Rlanner

Case Planner: Celine Cruz

DOOLEY ROBERTS & FOWLER LLP ATTORNEYS AT LAW



DAVID W. DOOLEY TIM ROBERTS KEVIN J. FOWLER JON A. VISOSKY SETH FORMAN SUITE 201, ORLEAN PACIFIC PLAZA 865 SOUTH MARINE CORPS DRIVE TAMUNING, GUAM 96913 TELEPHONE: (671) 646-1222 FACSIMILE: (671) 646-1223

www.GuamLawOffice.com

Of Counsel: MELINDA C. SWAVELY

Writer's Direct Email: Swavely@GuamLawOffice.com

February 23, 2016

Via Hand Delivery
Mr. John Z. Arroyo
Chairman
Guam Land Use Commission
c/o Mr. Marvin Q. Aguilar, Guam Chief Planner
Department of Land Management
Government of Guam
Tamuning, Guam 96913

SUBJECT:

HAPPY CONDO

REGISTRATION NO.:

160

TYPE:

REQUEST FOR APPROVAL OF THE SEVENTH

SUPPLEMENTARY FINAL REPORT

Dear Chairman Arroyo and Commissioners:

Our firm represents Karen Young S. Kim ("Developer") of Happy Condo ("Project") on Lot No. 10, Block No. 1, Estate No. 8385, Tumon Heights, Guam 5091#1-1REM-3NEW, Dededo, Guam.

The Developer is requesting the issuance of a Seventh Supplementary Final Report. The Developer has sold two of the four units. However, the Developer sold those units at a loss due to financial hardship at that time. Developer is now waiting for Guam housing market prices to go up to sell the remaining units so that she can recoup some of her loss on the investment.

We have attached hereto information in support of the issuance of a Seventh Supplementary Final Report for the Project. Your favorable consideration of our request for issuance of a Seventh Supplementary Final Report is respectfully requested.

Sincerely,

Melinda S. Swayel

Attachments

Application No.: 2008-78G Karen Young S. Kim

HPR - 7th Supplementary Rpt

Happy Condo - Reg 160

Accepted Date:

25-Feb-16

Case Planner:

CelineC

INFORMATION IN SUPPORT OF THE ISSUANCE OF A SEVENTH SUPPLEMENTARY FINAL REPORT FOR HAPPY CONDO

- 1. Brief background information of the project identifying the project name and any amenities provided, its location by lot, block, tract number, municipality.
 - a. Name of Project: Happy Condo
 - b. Location: Lot No. 10, Block No. 1, Tumon Heights, Tamuning, Guam
 - c. Zoning: R-2
 - d. <u>Developer</u>: Sung Min Choi (now deceased) and Karen Young S. Kim
 - e. <u>No. of Buildings and Floors</u>: There is one (1) reinforced concrete apartment building with three (3) floors, the ground level consisting of an access way for ingress and egress to the Apartment Building, eight (8) parking stalls, gates, refuse facilities and ciphered locked entrance door; the second floor consisting of two (2) Units; the third floor consisting of two (2) Units.
 - f. No. of Units and Unit Types: There are four (4) Units. All of the four (4) Units have three (3) bedrooms, two (2) bathrooms, a kitchen, living area, dining area, laundry room and a balcony.
 - Parking Stalls: There are eight (8) parking stalls on the ground level of the Project reserved for use by the individual Unit owners, with each Unit being assigned two (2) parking stalls for its exclusive use as a Limited Common Element appurtenant to the Unit. Each parking stall shall contain no less than one hundred eighty (180) square feet, and shall have immediate access from the ground level in the Project to the access ways which lead to the public street. The parking stalls appurtenant to each of the Units are as follows:

Apt. No.	Parking Stall Nos.		
Unit A	1 & 2		
Unit B	3 & 4		
Unit C	5 & 6		
Unit D	7 & 8		

h. Other Amenities or Features: Gates, access ways, ciphered locked entrance door and refuse facilities.

2. <u>Number and identification of Units sold.</u>

Units A and B

3. Number and identification of Units not sold.

The following Units are not sold: C and D.

4. Type of extension requested.

[] Preliminary [X] Final

5. Number of extension (i.e., third, fourth, etc.).

Seventh

6. Real Estate Broker. Has the Developer retained the services of a real estate broker/company to marketing the remaining units? If so, please provide the complete name, mailing address and phone number of the broker/company. Does the Developer intend to market the remaining units himself or within his company?

The Developer plans to sell Units C and D when the housing market prices on Guam go up. The Developer sustained a loss on the sale of Units A and B and hopes to recoup some of the loss through the sales of Units C and D. The Developer previously retained the services of Soo K. Choi, principal broker for MACKS Realty, to market the units and plans to retain her services or another real estate broker in the future to assist the Developer in marketing the units.

7. Marketing Plan. A brief explanation on how the Developer or his broker plans to market the remaining condominium units.

The Developer plans to sell the remaining two condominium units when Guam's housing market prices go up.

8. Changes to original Project. Should there be any material changes to the Project at the time of the application for a supplementary report to extend an existing Report, the Developer shall be required to identify those exact changes in his Report, and provide an explanation as to what remedies or action has been taken to correct those changes. Supporting documents are recommended to justify material changes.

The Developer has re-financed the mortgage on the Property. The following prior mortgages and assignments of rental income have been released: 1) Mortgage dated and recorded on November 30, 2007, under Instrument No. 765246, in the Department of Land Management, Government of Guam, executed by Sung Min Choi in favor of Citizen Security Bank (Guam), Inc. in the principal amount of \$99,000.00, plus interest; 2) Assignment of Rents dated and recorded November 30, 2007, under Instrument No.

765247, in the Department of Land Management, Government of Guam, executed by Sung Min Choi, assignor to Citizens Security Bank (Guam) Inc., Its Successors and/or Assigns, assignee; 3) Mortgage dated and recorded on January 22, 2008, under Instrument No. 767754 in the Department of Land Management, Government of Guam, executed by Sung Min Choi in favor of Citizen Security Bank (Guam), Inc., in the principal amount of \$150,000.00, plus interest; and 4) Assignment of Rents dated and recorded January 22, 2008, under Instrument No. 767755, in the Department of Land Management, Government of Guam, executed by Sung Min Choi, assignor to Citizens Security Bank (Guam) Inc., Its Successors and/or Assigns, assignee.

The Project is now subject to the following mortgage and assignment of rental income: 1) Mortgage dated and recorded on May 31, 2012, under Instrument No. 837301, in the Department of Land Management, Government of Guam, executed by Karen Young Sook Kim in favor of Bank of Hawaii in the principal sum of \$230,000.00; and 2) Assignment of Rental Income dated and recorded on May 31, 2012, under Instrument No. 837302, in the Department of Land Management, Government of Guam, executed by Karen Young Sook Kim, Assignor, to Bank of Hawaii, Assignee.

Developer will obtain a partial release of the above-referenced Real Property Mortgage and Assignment of Rental Income from Bank of Hawaii for each Unit at the time of conveyance of such Unit.

Parameter of Land Management

Per time Year 5, March 03, Day 13, Time 2:59

Receive No. ______ 39509

GUAM LAND USE COMMISSION
DEPARTMENT OF LAND MANAGEMENT
GOVERNMENT OF GUAM
TAMUNING, GUAM 96913

SIXTH SUPPLEMENTARY FINAL HORIZONTAL PROPERTY REGIME PUBLIC REPORT

ON

HAPPY CONDO

Lot No. 10, Block No. 1, Tumon Heights, Municipality of Tamuning, Guam.

REGISTRATION NO 160
IMPORTANT - Read This Report Before Buying

This Report is Not an Approval or Disapproval of This Condominium Project

It reflects information obtained by the Guam Land Use Commission (the "Commission") in its investigation of the Project. This report, based on a principle of disclosure, is issued by the Commission for the purpose of preventing fraud, misrepresentation or deceit.

The Developer shall not enter into a binding contract or agreement for the sale of any unit in the Project, until:

- A copy of the Commission's Final Public Report and all Supplementary Public Reports have been given to the prospective purchaser,
- (2) The latter has been given an opportunity to read the same, and,
- (3) His receipt taken therefor.

Effective: February 26, 2015 Expires: March 26, 2016

SPECIAL ATTENTION

A comprehensive reading of this report by prospective purchasers is urged in order that personal requirements and expectations to be derived from the property can be ascertained. The attention of the purchaser or prospective purchaser is particularly directed to the following:

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED INTENTION, QUESTIONNAIRE, DECLARATION OF HORIZONTAL PROPERTY REGIME, BYLAWS OF THE ASSOCIATION OF OWNERS, DATED JUNE 2008 AND HEARD BEFORE THE COMMISSION ON AUGUST 14, 2008; THE REQUEST FOR ISSUANCE OF A FIRST SUPPLEMENTARY FINAL PUBLIC REPORT HEARD BEFORE THE COMMISSION ON SEPTEMBER 24, 2009; THE REQUEST FOR ISSUANCE OF A SECOND SUPPLEMENTARY FINAL PUBLIC REPORT HEARD BEFORE THE COMMISSION ON OCTOBER 7, 2010; THE REQUEST FOR AN AMENDED SECOND SUPPLEMENTARY FINAL PUBLIC REPORT HEARD BEFORE THE COMMISSION ON NOVEMBER 8, 2012; THE REQUEST FOR ISSUANCE OF A THIRD SUPPLEMENTARY FINAL PUBLIC REPORT HEARD BEFORE THE COMMISSION ON NOVEMBER 8, 2012; THE REQUEST FOR ISSUANCE OF A FOURTH SUPPLEMENTARY FINAL PUBLIC REPORT HEARD BEFORE THE COMMISSION ON NOVEMBER 8, 2012; THE REQUEST FOR ISSUANCE OF A FIFTH SUPPLEMENTARY FINAL PUBLIC REPORT HEARD BEFORE THE COMMISSION ON FEBRUARY 13, 2014; AND THIS REQUEST FOR ISSUANCE OF A SIXTH SUPPLEMENTARY FINAL PUBLIC REPORT HEARD BEFORE THE COMMISSION ON FEBRUARY 26, 2015. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO CONTINUE TO SELL THE CONDOMINIUM UNITS OF THIS PROJECT, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, TITLE 21, GUAM CODE ANNOTATED, CHAPTER 45, AS AMENDED (THE "ACT").

- 1. Description of Project. Happy Condo (the "Project") consists of Lot No. 10, Block, No. 1, TUMON HEIGHTS MUNICIPALITY OF TAMUNING, GUAM, ESTATE NO. 8385, SUBURBAN, said lot is marked and designated on Drawing No. 103-A, recorded October 27, 1954, under Instrument No.28003, in the Department of Land Management, Government of Guam, last Certificate of Title being No. 15170 in the names of Arthur F. Dralle and Jane R. Dralle, husband and wife, as tenants-in-common ("Property") and improvements thereon consisting of a three (3) storey reinforced concrete building ("Apartment Building") with four (4) residential apartment units ("Units"), and certain common elements ("Common Elements") as such term is defined in the Act.
- All Documents Submitted. The Developer of the Project has submitted to the Commission for examination all documents deemed necessary for the

registration of a condominium project and issuance of this Sixth Supplementary Final Public Report.

- 3. Compliance and Recording. The Declaration of Horizontal Property Regime (the "Declaration"), the Bylaws of the Association of Owners (the "Bylaws"), and a copy of the approved Floor Plans have been submitted to the Commission. The Commission finds these necessary documents comply with the Act. The Declaration, executed June 20, 2008 with the Bylaws attached, was filed in the Office of the Recorder, Government of Guam on September 23, 2008, under Instrument No. 779663 and the Condominium Map of the Project, No. 160, was recorded on September 12, 2008, under Instrument No. 779108.
- Ownership of Project. The Developer advises the Commission that Karen Young S. Kim is the sole owner of the Project. The Project was owned by Sung Min Choi and Karen Young S. Kim, as joint tenants with rights of survivorship. Sung Min Choi passed away on May 21, 2009 and, therefore, the Project is now owned by Karen Young S. Kim as the surviving joint tenant. An Affidavit of Death By Joint Tenant was filed with the Department of Land Management on August 9, 2009 under Instrument No. 794325.
- 5. Horizontal Property Act. The prospective purchaser is advised to acquaint himself with the provisions of the Act and any Condominium Rules and Regulations promulgated under the Act which relate to Horizontal Property Regimes.
- 6. Term of Report. This Sixth Supplementary Final Public Report automatically expires on March 26, 2016.
- 7. Printing and Distributing Report. The Developer is responsible for placing the Final Public Report and the First, Second, Amended Second, Third, Fourth, Fifth and Sixth Supplementary Final Public Report in the hands of all prospective purchasers or prospective owners and for securing a signed copy of the receipt for the Final Public Report and the First, Second, Amended Second, Third, Fourth, Fifth and Sixth Supplementary Final Public Report from each prospective purchaser. On completion of conveyance of all of the apartment units in the Project, the Developer will retain no residual interest in the Project.
- I. Name of Project: HAPPY CONDO
- II. Location: Lot No. 10, Block No. 1, Tumon Heights, Municipality of Tamuning, Guam.
- III. Zoning: R-2

IV. Developer:

Karen Young S. Kim

V. Attorney representing

Developer:

Melinda S. Swavely, Esq. of Dooley Roberts & Fowler LLP (Phone: 646-1222), 865 South Marine Corps Drive, Suite 201, Orlean Pacific

Plaza, Tamuning, Guam 96913.

VI. Description:

- The Project. The Declaration reflects that the Project consists of the Property and the improvements being a three storey Apartment Building with two (2) Units situated on the second floor of the Apartment Building and two (2) Units situated on the third floor of the Apartment Building, and Common Elements consisting of eight (8) parking stalls, refuge facilities, and ciphered locked entrance door, stairwells and other Common Elements of the Project, which are constructed thereon, in accordance with the plans and specifications sealed by Francisco Z. Diamzon AIA.
- The Apartments. The Project has four (4) Units with two (2) Units situated on the §2. second floor of the Apartment Building and two (2) Units situated on the third floor of the Apartment Building. Each of the four (4) Units have three (3) bedrooms, two (2) bathrooms, a kitchen, living area, dining area, laundry room, and balcony.
- §2.1. Included Within Apartments. Each apartment unit will be deemed to include the spaces bound by and contained within the perimeter walls, floors, windows, doors, and ceilings of each apartment unit and the floor area of the balcony appurtenant hereto, including all the walls, beams and columns within the perimeter walls which are not load-bearing, and the interior decorated or finished surfaces of all load-bearing walls, beams and columns, floors, and ceilings within the perimeter walls. The apartment units shall not be deemed to include the undecorated or unfinished interior load-bearing walls, perimeter walls, floors and ceilings surrounding each apartment unit; the building foundation; and any pipes, wires, conduits, or other utility lines running to an apartment unit which are utilized for or serve other apartment units, and all other parts of the Project which are Common Elements.
- Apartment Number, Location, and Square Footage of the Apartment Units. The apartment numbers, location, and square footage of the four (4) apartment units are as follows:

Apartment Building from North to South

Apt. No.	Floor of Apartment Building	No. of Square Feet Inclusive of the Balcony Area
Unit A Unit B Unit C Unit D	2nd 2nd 3rd 3rd	1,423.9 sq. ft. inclusive of balcony area of 206.sq. ft. 1,423.9 sq. ft. inclusive of balcony area of 206.sq. ft. 1,423.9 sq. ft. inclusive of balcony area of 206.sq. ft. 1,423.9 sq. ft. inclusive of balcony area of 206.sq. ft.

Common Elements. The Declaration reflects that the Common Elements consist of: §3.

- §3.1. Land. The Property in fee simple.
- §3.2. Building elements. All foundations, floor slabs, roofs, and all load-bearing floors, walls, columns, and beams of the buildings, but excluding the interior decorated or finished surface of all such load-bearing floors, walls, columns and beams, ceilings and floors within the perimeter walls of an individual apartment unit.
 - §3.3. Grounds and facilities. Access ways, stairways, refuse facilities, and gates.
- §3.4. Parking. The Common Element parking facilities consisting of eight (8) parking stalls on the ground level of the Project reserved for use by the individual Unit owners, with each Unit being assigned two (2) parking stalls for its exclusive use as a Limited Common Element appurtenant to the Unit. Each parking stall shall contain no less than one hundred eighty (180) square feet, and shall have immediate access from the ground level of the Project to access ways which lead to the public street.
- §3.5. Fixtures. All pipes, cables, conduits, ducts, flues, chutes, wiring, equipment, and other central and appurtenant installations over, under, and in the Project which serve more than one (1) apartment for services such as and including conveyance, power, light, water, sewer, telephone and television signal transmission, if any;
- §3.6. Other personal property. All articles of personal property of the Project necessary or convenient to its existence, maintenance, safety or normally in common use; and
- §3.7. Other parts of property. All other parts of the Project defined as Common Elements.
- §4. Limited Common Elements. Certain parts of the Common Elements, herein called and designated "Limited Common Element(s)", are hereby set aside and reserved for the exclusive use of certain apartment units, and such apartment units shall have appurtenant thereto an exclusive easement for the use of such Limited Common Elements.
- §4.01. Parking Stalls. There are a total of eight (8) parking stalls which are Limited Common Elements. Each Unit shall be assigned two (2) parking stalls which are set aside and allocated for the exclusive use of the owner of such Unit as a Limited Common Element appurtenant to such Unit. Each parking stall, containing no less than one hundred eighty (180) square feet and has access to the Common Element parking facilities in which it is located. The parking stalls appurtenant to each of the Units are as follows:

Apt. No.	Parking Stall Nos.
Unit A	1 & 2
Unit B	3 & 4
Unit C	5 & 6
Unit D	7 & 8

§5. Percentage of Common Element Interest to be conveyed Purchaser. The apartment units shall have appurtenant thereto an undivided interest in the Common Elements, as follows:

Apt. No.	Percentage of Undivided Common Element Interest	
Unit A	25%	
Unit B	25%	
Unit C	25%	
Unit D	25%	

- §6. Voting and Percentage in Common Elements. The undivided Common Element interest, proportionate share in the profits and Common Element expenses of the Project, and representation for voting purposes shall be allocated on the basis of the percentage set out in the Declaration at §3.01 and §5, above. The percentage of the undivided interest of each apartment unit owner in the Common Elements as expressed in the Declaration shall have a permanent character and shall not be altered without the consent of all apartment unit owners and lienholders (if lienholder requires such consent) expressed in an amended Declaration duly recorded. The percentage of the undivided interest in the Common Elements shall not be separated from the apartment unit to which it is appurtenant and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument.
- §7. Purpose of Building and Restrictions as to Use. The Declaration states that the apartment units may be occupied and used as private dwellings by the respective owners thereof, their tenants, families, domestic servants and social guests, and shall not be rented for transient or hotel purposes, which are defined as (i) rental for any period less than thirty (30) days, or (ii) any rental in which the occupants of the apartment are provided customary hotel services such as room service for food and beverage, maid service, or laundry and linen service.
- §8. Financing of Project. Developer financed the Project through its own funds, personal loans and loans totaling \$249,000.00 from Citizen Security Bank.
 - §9. Ownership of Land. The Developer is the owner in fee simple of the Property.
- §10. Encumbrances Against Title. The Property is subject to the following encumbrances:

 1) Covenants contained in that certain Corrective Deed dated June 7, 1963 and recorded on July 16, 1963 under Instrument No. 50431, in the Department of Land Management, Government of Guam;

 2) Restrictions, covenants and obligations set forth in the Final Declaration of the Horizontal Property Regime, By Laws of the Association of Homeowners, and House Rules for Happy Condo as such documents are adopted and amended from time to time;

 3) Mortgage dated and recorded on May 31, 2012, under Instrument No. 837301, in the Department of Land Management, Government of Guam, executed by Karen Young Sook Kim in favor of Bank of Hawaii in the principal sum of \$230,000.00; and 4) Assignment of Rental Income dated and recorded on May 31, 2012, under Instrument No. 837302, in the Department of Land Management, Government of Guam, executed by Karen Young Sook Kim, Assignor, to Bank of Hawaii, Assignee.

Developer will obtain a partial release of the above-referenced Real Property Mortgage and Assignment of Rental Income from Bank of Hawaii for each Unit at the time of conveyance of such Unit.

- §11. Management and Operation. The Bylaws of the Association of Owners of Happy Condo state that the Board of Directors may employ for the Association a management agent or manager to perform such duties and services as the board shall authorize, including the care, upkeep, and surveillance of the Project and the Common Elements, collection of monthly assessments from the owners, and the designation and dismissal of personnel necessary for the maintenance of the Project and the Common Elements. The Bylaws also state that each apartment unit owner shall contribute pro rata for the expense of administration of the Project and the Common Elements.
- §12. The Developer advises the Guam Land Use Commission that the construction on the Project commenced in June 2007 and was completed on May 19, 2008.

Information in Report as of February 26, 2015

The purchasers or prospective purchaser should be cognizant of the fact that this published report represents information disclosed by the Developer in the Notice of Intention, Questionnaire, Declaration, and Bylaws, dated June 19, 2008 and the Questionnaire, Declaration, and Bylaws dated June 20, 2008 and heard before the Commission on August 14, 2008 and filed in the Office of the Recorder, Government of Guam, on September 23, 2008 under Instrument No. 779663; the Condominium Map for the Project filed in the Office of the Recorder, Government of Guam, on September 12, 2008 under Instrument No. 779108; the Final Public Report filed in the Office of the Recorder, Government of Guam, on October 3, 2008 under Instrument No. 780259; the request for issuance of a First Supplementary Final Public Report heard before the Commission on September 24, 2009 and filed in the Office of the Recorder, Government of Guam, under Instrument Number 796768; the request for issuance of a Second Supplementary Final Public Report heard before the Commission on October 7, 2010 and filed in the Office of the Recorder, Government of Guam, under Instrument Number 822857; the request for an Amended Second Supplementary Final Public Report heard before the Commission on November 8, 2012 and filed in the Office of the Recorder, Government of Guam, on December 3, 2012 under Instrument Number 844836; the request for issuance of a Third Supplementary Final Report heard before the Commission on November 8, 2012 and filed in the Office of the Recorder, Government of Guam, on December 5, 2012 under Instrument Number 844936; the request for issuance of a Fourth Supplementary Final Report heard before the Commission on November 8, 2012 and filed in the Office of the Recorder, Government of Guam, on December 11, 2012 under Instrument Number 845124; the request for issuance of a Fifth Supplementary Final Report heard before the Commission on February 13, 2014 and filed March 5, 2014 under Instrument Number 862339 and this request for issuance of a Sixth Supplementary Final Report heard before the Commission on February 26, 2015.

Finding that Report should Issue

The Commission finds that the Developer has met and fulfilled the requirements of the Act which establishes the provisions for the issuance of a Sixth Supplementary Final Public Report.

Title, Number and Date

This is a SIXTH SUPPLEMENTARY FINAL HORIZONTAL PROPERTY REGIME (CONDOMINIUM) PUBLIC REPORT which is made a part of REGISTRATION NO. 160. The report, when reproduced shall be a true copy of the Commission's public report.

GUAM LAND USE COMMISSION, PLANNING SECTION, DEPARTMENT OF LAND MANAGEMENT, GOVERNMENT OF GUAM, TAMUNING, GUAM 96913,

By:

Michael J.B. Borja

Executive Secretary,

Guam Land Use Commission.

GUAM) ss: CITY OF TAMUNING)

ON THIS day of March, 2015, before me, a Notary Public in and for Guam, personally appeared Michael J.B. Borja, known to me to be the Executive Secretary of the Guam Land Use Commission, whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed on behalf of said commission for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public

AOTAAL PUBLIC

NOTARY PUBLIC
In and for Guarn, U.S.A
My Commission Expires: October 63, 2016
P.O. Box 3457 Hegates, Guarn \$6032

ATTACHMENT D



EDDIE BAZA CALVO Governor

RAY TENORIO
Lieutenant Governor

DIPÅTTAMENTON MINANEHAN TÅNO' (Department of Land Management) GUBETNAMENTON GUÄHAN (Government of Guam)



MICHAEL J.B. BORJA Director

DAVID V. CAMACHO Deputy Director

March 31, 2016

Memorandum

TO:

Chairman, Guam Land Use Commission

FROM:

Guam Chief Planner

SUBJECT:

Staff Report - Application No. 1992-39C Request for Issuance of

Supplementary Final Public Report

RE:

Alupang Beach Tower Condominium - Registration Number 092

1. PURPOSE:

- A. Application Summary: Alupang Beach Tower Home Owner's Association, request a First Supplementary Final Public Report for "Alupang Beach Tower", on Lot 2015-1-REM-NEW-2 and Lot 131 Rev, Unit 1, in the Municipality of Tamuning, in an "C" (Commercial) zone, HPR Registration No. 092, under application No. 1992-39C, pursuant to §45101 to §45155, Chapter 45, Horizontal Property Regime Act.
- B. Legal Authority: Title 21, GCA (Real Property), Chapter 45 (Horizontal Property Act), §45154, Automatic Expiration of Public Reports.

2. CHRONOLOGICAL FACTS:

- A. Pursuant to §45154 of Chapter 45, Title 21, GCA, all public reports expire thirteen (13) months after the date of issuance of said public report. The Commission approved and issued a Preliminary Public Report for "Alupang Beach Tower" (ABT) dated August 8, 1991 with an expiration date of September 8, 1992. (Reference Instrument No. 458858 dated August 16, 1991).
- B. A Final Report was issued on July 9, 1992, expiring on August 9, 1993. (Reference Instrument No. 475449 dated August 12, 1992).
- C. The Guam Land Use Commission, at its regular meeting on October 28, 2004, approved the "Replacement Declaration" to the original Declaration of the Alupang Beach Tower. (Reference Instrument No. 700760 dated November 22, 2004.

Street Address: 590 S. Marine Corps Drive Suite 733 ITC Building Tamuning, GU 96913

> Mailing Address: P.O. Box 2950 Hagātīna, GU 96932

Website: http://dim.guam.gov

E-mail Address: dlmdir@land.quam.gov

Telephone: 671-649-LAND (5263)

Facsimile: 671-649-5383



- D. On August 14, 2008, Attorney Terence Brooks, representing the applicant, Alupang Beach Tower Homeowner's Association, requested issuance of a First Supplementary Public Report. Based on the discussion of the request, Chairman Jay Lather recommended a technical work session for commissioners and the public to review the technical aspect of the project. Attorney Brooks agreed and it was noted that the request would go back to the commission in two weeks for a final review of the action.
- E. The matter came before the GLUC again on August 28, 2008, however, no action was taken and the item was continued.

[As a result of the review of this application and all the issues that were brought forth, Commissioner's approved resolution 2008-03 — Establishing a Policy Definition for the Application of Minimum Lot Areas in the Calculation of Residential Density in a C Zone.]

- F. On October 9, 2008, in continuation of the meetings of 8/14/08 and 8/28/08, this application came before the commission, however, as a result of a public/technical session held the Friday before, and the issues brought forth at public/technical meeting, a letter was received from the President of the Homeowner's Association stating "This is to confirm that the Board of Directors of Alupang Beach Tower Homeowner Association desires to postpone the commission's hearing on this project which is currently scheduled for today."
- G. As a continuance of the meeting of August 28, 2008 (October 9, 2008), this item was on the Agenda for the GLUC regular meeting of June 28, 2012. Discussions were centered on the issues of density and amending the HPR (Declaration). After lengthy discussions, the commission took action to issue a supplementary public report and accept amendments to the Declaration of HPR with a density of 158 condominium units and 2,000 square feet of commercial use. (See attached Notice of Action dated July 16, 2016 and recorded at the Department of Land management under Instrument No. 840122 dated August 8, 2012.)
- H. On July 12, 2012, in continuance of the GLUC meeting of June 28, the request for issuance of the First Supplementary Final Public Report and the acceptance of the "First Amendment to the Replacement Declaration of Horizontal Property Regime of the Alupang Beach Tower" was once again before the commission. Based on issues brought forth in previous meetings, and after technical review of the "First Amendment to the Replacement Declaration of Horizontal Property Regime of the Alupang Beach Tower", the Commission approved the submitted documents and advised the applicant that all documentation was in place for ABT to move forward. (See attached Notice of Action dated July 16, 2016 and recorded at the Department of Land management under Instrument No. 840122 dated August 8, 2012.)
- I. On March 18, 2016, a "request for Approval of Amended Supplementary Final Public Report" was received from the applicant indicating that due to an oversight on the part of the applicant, a Final Public Report was not issued and hence, this current request before the Guam Land Use Commission.

Staff Report – Request for Issuance of Supplementary Final Public Report "Alupang Beach Tower" (HPR Registration No. 092) Page 3 of 5

3. DISCUSSION:

Buildings: There are three buildings. Building 1 is Twelve (12) Stories containing a total of One Hundred Forty-Three (143) residential apartments, commercial unit #1, a lobby, and other common areas for condominium use. Additionally, Building 1 contains three (3) elevators and two fire stairways. There is also a pool, a Jacuzzi and other recreational facilities. Building 2 is a single story building containing commercial unit #2 with a lower level. Building 3 is three stories containing Fifteen (15) residential apartments, a fitness center, and parking stalls.

OFFERINGS

Apartment Descriptions: There are Twenty-Five (25) different floor plan types.

Type of Unit	SQ FT	Quantity	Unit Numbers
AXL	1,752	1	200
BXL	1,570	2	202, 204
B Left	1,729	57	206, 208, 210 302, 304, 306 308, 310, 312 402, 404, 406 408, 410, 412 502, 504, 506 508, 510, 512
			602, 604, 606, 608, 610, 612, 702, 704, 706, 710, 712, 802, 804, 806, 808, 810, 812, 802, 804, 806, 808, 810, 812, 802, 804, 808, 810, 812, 802, 803, 804, 806, 808, 810, 812, 802, 803, 804, 806, 808, 810, 812, 802, 803, 804, 806, 808, 810, 812, 802, 803, 804, 806, 808, 810, 812, 802, 803, 804, 806, 808, 810, 812, 802, 803, 804, 806, 808, 810, 812, 802, 802, 802, 802, 802, 802, 802, 80
			902, <u>904</u> , 906 908, 910, 912 1002, 1004 1006, 1008 1010, 1012
			1102, 1104 1106, 1108 1110, 1112

Staff Report – Request for Issuance of Supplementary Final Public Report "Alupang Beach Tower" (HPR Registration No. 092) Page 4 of 5

Type of Unit	SQ FT	Quantity	Unit Numbers
B Right	1,729	50	203, 205, 207, 209, 211, 303, 305, 307, 309, 311, 403, 405, 407, 409, 411, 503, 505, 507, 509, 511, 603, 605, 607, 609, 611, 703, 705, 707, 709, 711, 803, 805, 807, 809, 811, 903, 905, 907, 909, 911, 1003, 1005, 1007, 1011, 1103, 1105, 1107, 1109, 1111
204A	765	1	204A
Α	1,623	9	300, 400, 500, 600, 700, 800, 900, 1000, 1100
AX	1,759	10	201, 301, 401, 501, 601, 701, 801, 901, 1001, 1101
C	3,996	1	1200
CX	4,136	1	1201
D	3,621	2	1202, 1204
E	1,814	3	1203, 1205, 1206
F	2,344	2	1207, 1208
101	1,506	1	101
102	1,838	1	102
103	1,851		103
104	2,516	1	104
A201	976	2	A201, A301
A202	764	2	A202, A302
A203	1,362	1	A203
A204	946	2	A204, A304
A205	948	2	A205, A305
A206	1,234	2	A206, A306
A207	1,228	2	A207, A307
A303	1,574	1	A303
A308	1,246	1	A308

Highlighted units are Units Sold/Privately Owned.

Staff Report - Request for Issuance of Supplementary Final Public Report "Alupang Beach Tower" (HPR Registration No. 092) Page 5 of 5

Common Elements: The Common Elements are listed in the First Amendment to the Replacement Declaration of Horizontal Property Regime of the Alupang Beach Tower, Also. the Government Park adjacent to the ABT, as located on Lot 2015-1REM NEW-R2, shall be maintained by the ABT's Owners Association as required by the Notice of Action from the GLUC. The cost of maintenance of such park shall become part of the common area costs.

There are Eleven (11) condominium units that are privately owned, and One Hundred Forty-Seven (147) condominium units are not sold.

- 4. ANALYSIS: While we do not want to oversimplify this request as this project from its inception in 1988 has been complex, a Notice of Action issued under Instrument No. 840122 intended to clarify the issue of the maximum allowed density at 158 units and to allow an amendment to the declaration of Horizontal Property Regime. The amended was needed in order to convert the existing commercial space into additional apartments to be included under the HPR via the "First Amendment to the Replacement Declaration of Horizontal Property Regime of the Alupang Beach Tower". It was through administrative oversight that a First Supplementary Final Public Report was not issued and recorded. The applicant, to wit, had provided an affidavit stating that there have been no material changes to the project and desires to resume sales of the condominiums.
- 5. STAFF RECOMMENDATION: Recommend issuance of First Supplementary Final Public Report for the developer to sell condominium units, and pursuant to §45154 of Chapter 45, Title 21 the issuance of this First Supplementary Final Public Report is for a period of thirteen months to end on May 14, 2017.

Marvin Q. Aguilar Chief Planner

case Planner: Celine Cruz

- ATTACHMENTS: 1. Preliminary Public Report (458858)
 - 2. Final Public Report (475449)
 - 3. NOA (700760) Approved Replacement Declaration
 - 4. GLUC minutes of B/14/2008
 - 5. Resolution 2008-03
 - 6. GLUC minutes of 8/28/2008 and 10/9/2008
 - 7. GLUC minutes of 6/28/2012 and NOA (840122)
 - 8. GLUC minutes of 7/12/2012
 - Application 1992-39C ABT Homeowners Association request for Final Public Report

12c. 1991

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DE OFFICIO

JK Gumo Ja

(ABOVE SPACE FOR RECORDER'S USE ONLY)

TERRITORIAL LAND USE COMMISSION TERRITORY OF GUAM Government of Guam Agana, Guam 96910

PRELIMINARY
HORIZONTAL PROPERTY REGIMES (CONDOMINIUM)
PUBLIC REPORT ON
ALUPANG BEACH TOWER
Municipality of Dededo
Territory of Guam

REGISTRATION NO. 092

IMPORTANT -- READ THIS REPORT BEFORE BUYING

THIS REPORT IS NOT AN APPROVAL OR DISAPPROVAL OF THIS CONDOMINIUM PROJECT.

4 1 44

If reflects information obtained by the Territorial Land Use Commission in its investigation of the project. This Report, based on the principle of disclosure, is issued by the Commission for the purpose of preventing fraud, misrepresentation or deceit.

The Developer shall not enter into a binding contract or agreement for the sale of any unit in the condominium project, but may only take reservations thereafter.

- A copy of this Report has been given to the prospective purchasers;
- The prospective purchasers have been given an opportunity to read the same; and
- His receipt is taken.

ISSUED: August 8, 1991

EXPIRES: September 8, 1992

SPECIAL ATTENTION

A comprehensive reading of this Report is urged in order that personal requirements and expectations to be derived from the property can be ascertained. The attention of the purchaser or prospective purchaser is particularly directed to the following:

THE REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED ON AUGUST 8, 1991. THE DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT (TITLE VI, PART IV, DIVISION SECOND, CIVIL CODE OF GUAM, SECTIONS 1270, 1324).

BACKGROUND

The ALUPANG BEACH TOWER is a fee simple condominium project being built by ABC ASSOCIATES, a Guam limited partnership, whose mailing address is 997 South Marine Drive, Tamuning, Guam 96911. The Developer ABC ASSOCIATES has submitted to the Territorial Land Use Commission on August 8, 1991, its intention to create the condominium project and has sought approval of the Territorial Land Use Commission on August 8, 1991. The Territorial Land Use Commission has given its approval for this Preliminary Public Report and the following information is hereby provided to the public.

- INFORMATION

The Developer is responsible for placing a true copy of this Preliminary Public Report in the hands of all purchasers and prospective purchasers. The buyer shall sign a required receipt signifying that he has had an opportunity to read this Preliminary Public Report.

- 1. NAME: The Horizontal Property Regime hereby established shall be known as the ALUPANG BEACH TOWER.
- 2. LAND DESCRIPTION: The fee simple interest of the following lots, collectively referred to in the Declaration (as submitted to the TLUC) as the "property", are hereby submitted to the Preliminary Horizontal Property Regime as set forth in the Declaration as submitted to the TLUC:
 - a. Lot no. 131 Rev., Unit 1, Dededo, Guam, containing an area of 2,065± s.m. as depicted on L.M. check no. 378FY90, Drawing no. DSF-89-11, recorded under instrument no. 440190 on August 21, 1990.
 - b. Lot no. 2015-1-Rem-New-2, (consolidation of Lot nos. 2015-1 Rem & 2015-1-1) Dededo, Guam, containing an area of 5,474± s.m. or 58,919± s.f., as depicted on map drawing no. DSI-S-89-10; L.M. check no. 015 FY 90, and recorded under instrument no. 436502 on June 14, 1990.

Lot no. 131 Rev., Unit 1, Dededo, as set forth above, has been received by the Developer from the government as a result of an exchange. Title must be registered and Developer is in the process of submitting the land to land registration proceedings.

- DESCRIPTION OF BUILDINGS: There shall be two connected buildings, principally constructed of reinforced concrete. One (1) building shall be twelve (12) stories high and shall contain ONE HUNDRED THIRTY-EIGHT (138) single family residential condominium units, and a commercial condominium unit on the plaza level (first floor). The other building shall be a one story building, on the beach side of the said property, containing a commercial condominium unit with a lower level. The 12 story building shall contain three (3) elevators and two fire stairways. There shall also be a pool and other recreational facilities as shown on the condominium plans. These buildings are depicted on the drawings attached to the Declaration as submitted to the TLUC as exhibit sheet Al.1, the overall site plan. Any reference to the Declaration to "exhibit page __" shall mean the exhibits attached to the Declaration as submitted to the TLUC and the sheet number, i.e. A2.10, shall mean the number found at the bottom right hand corner of said exhibit). All exhibits attached to the Declaration as submitted to the TLUC reflect a portion of the condominium drawings and specifications as prepared by CCM 3 Architects, Ltd., whose mailing address is 230 W. Soledad Avenue, #302 GMP Building, Agana, Guam 96910. Any reference to "drawings", "specifications" "condominium drawings" shall mean such drawings or OF specifications as prepared by CCM 3 Architects, Ltd., or any drawings or specifications relating to the ALUPANG BEACH TOWER and filed with the Department of Public Works and with the Department of Land Management, Government of Guam. These exhibits are a part of the Condominium Map No. 092 for the ALUPANG BEACH TOWER, which will be recorded at a later date with the Department of Land Management, Government of Guam.
- 4. UNITS GENERAL: The Project shall contain 138 single family residential units, and 2 commercial condominium units. Any reference to the Declaration as submitted to the TLUC, to commercial unit(s) shall mean the commercial condominium unit(s). One of the commercial units is located inside the 12 story building on the first floor or plaza level, and the other commercial unit is in a building on the beach side of the said property. Any reference to "unit(s)" within the Declaration (as submitted to the TLUC) shall mean a condominium unit or units, commercial and/or residential.

5. UNITS - RESIDENTIAL TYPES AND SIZE OF LIVING AREAS: There are different types of residential units within the Project. The number and type of residential units are:

1.			
CONDOMINIUM UNIT TYPE	NO. OF UNITS	UNIT AREA	LANAI
"A"	9 Units	1,426± s.f.	(A-1) 142± s.f. (A-2) 55± s.f. Total 197± s.f.
"A" Extended	10 Units	1,515± s.f.	(AE-1) 189± s.f. (AE-2) 55± s.f. Total 244± s.f.
"A" Extended Lanai	1 Unit	1,426± s.f.	(AEL-1)142± s.f. (AEL-2)184± s.f. Total 326± s.f.
"B"	107 Units	1,157± s.f.	(B-1) 122± s.f.
"B" Extended Lanai	2 Units	1,157± s.f.	(BEL-1)413± s.f.
"C" First Floor "C" Mezzanine "C" Total	1 Unit	2,394± s.f. 1,081± s.f. 3,475± s.f.	(C-1) 174± s.f. (C-2) 55± s.f. (C-3) 292± s.f.
			Total 521± s.f.

"C" Extended First Floor Mezzanine	1 Unit	2,448± s.f. 1,081± s.f.	(CE-2)	260± s.f. 55± s.f.
"C Extended Total		3,529± s.f.	(CE-3) Total	292± s.f. 607± s.f.
"D" First Floor "D" Mezzanine "D" Total	2 Units	2,000± s.f. 1,037± s.f. 3,037± s.f.	(D-1) (D-2)	292± s.f. 292± s.f. 584± s.f.
"E" First Floor "E" Mezzanine "E" Total	3 Units	987± s.f. 535± s.f. 1,522± s.f.	(E-1)	292± s.f. 0 s.f. 292± s.f.
"F" First Floor "F" Mezzanine "F" Total	2 Units	1,207± s.f. 697± s.f. 1,904± s.f.		292± s.f. 148± s.f. 440± s.f.
TOTAL RESIDENTIAL	138 UNITS		<u> </u>	
Commercial Unit #1	Plaza Level Storage Are	5,384± s.f. (ir a 224± s.f.	ncludes r	estrooms)
Commercial Unit #2	Lower Level Plaza Level	2,675± s.f. 1,214± s.f.		

6. UNITS - COMMERCIAL: There shall be two (2) commercial condominium units, one on the first floor or plaza level of the said 12 story building, and the other in a one (1) story connected or attached building on the beach side of the said property. The commercial units are as follows:

a. COMMERCIAL UNIT #1 -

This commercial unit #1 is depicted on the copy of the drawings attached to the Declaration as submitted to the TLUC as exhibit sheet A2.10, and is located on the first floor or plaza level within the 12 story building. Commercial unit #1 contains $5,384\pm$ s.f. (including restrooms). Commercial unit #1shall also include the 244± s.f. storage area as shown on the drawings and the use of this space shall be restricted as set forth below. Water and power to commercial unit #1 shall be separately metered. The restrooms although a part of commercial unit #1, shall be kept open for use by customers and guests of the owner of commercial unit, #1 and for the owners of the residential units and their guests during hours by which the owner of the commercial unit #1 shall be open for business. The commercial unit #1 owner shall be responsible for all repairs and maintenance of the restrooms. Commercial unit #1 shall have the exclusive use of certain limited common areas as depicted on exhibit sheets A2.10 and A2.12 attached to the Declaration as submitted to the TLUC. These limited common areas for commercial unit #1 are designated on the drawings as L.C.A. NO. 1-1 through 1-5 and shall be for the exclusive use by commercial unit #1, unless specifically provided to the contrary in the Declaration as submitted to the TLUC.

ii. The storage area of 244± s.f. as shown on the drawings shall exclusively belong to commercial unit #1 and is not part of the common area. This use is restricted and shall only be used for storage of equipment or property of commercial unit #1. The owner of commercial unit #1 may fence the area for security purposes and may build or install shelves therein without Board approval provided all proper building permits are obtained, and such work shall meet all building code requirements, shall not damage or endanger the structural integrity of the walls or foundation, and provided that the drawings of such fencing and shelves are submitted to the Board at least ten (10) days prior to the construction thereof. The Board shall have the right to stop such construction or installation of the fence and shelves at any time if such construction or installation damages or endangers the

structural integrity of the walls or foundation. Maintenance costs of this area shall be at commercial unit #1's expense. Cost of repairs for any damage to the structural walls as a result of commercial unit #1's use shall be paid by owner of commercial unit #1. All damage to the structural walls or common elements not caused by commercial unit #1's use such shall be a common area expense.

b. COMMERCIAL UNIT #2 - Commercial unit #2 is in a connected building located on the beach side of said property. It contains a lower level with a unit area of 2,675± s.f., and a ground floor or Plaza level containing a unit area of 1,214± s.f. This commercial unit #2 as depicted on exhibit sheets A2.8 and A2.10 attached to the Declaration as submitted to the TLUC. Water and power is separately metered. Commercial unit #2 shall have the exclusive use of certain limited common areas as depicted on exhibit sheets A2.8 and A2.10 attached to the Declaration as submitted to the TLUC. These limited common areas for commercial unit #2 are designated on the drawings as L.C.A. NO. 2-1 through 2-4 and shall be for the exclusive use by commercial unit #2, unless specifically provided to the contrary in the Declaration as submitted to the TLUC.

7. FLOOR LAYOUT - 12 STORY BUILDING

- a. LOWER LEVEL The lower level of the 12 story building, see exhibit sheet A2.8 attached to the Declaration as submitted to the TLUC, shall contain mechanical and electrical rooms, elevator lobbies, storage areas and rooms, and parking.
- b. PLAZA-OR GROUND LEVEL The plaza or ground level, shall contain commercial unit #1, rest rooms, lobby, elevator lobbies, security room, mail room, electrical and equipment rooms, parking stalls, etc. as depicted on exhibit sheet A2.10 attached to the Declaration as submitted to the TLUC.
- C. SECOND FLOOR The second floor shall contain one (1) type A Extended Lanai unit, one (1) type A Extended unit, two (2) type B Extended Lanai units, eight (8) type B units, electrical equipment rooms, storage rooms and bathrooms. This level connects to a pool, recreation decks, gazebos, a jacuzzi, and elevator lobbies as depicted on exhibit sheet A2.12 attached to the Declaration as submitted to the TLUC.
- d. THIRD TO ELEVENTH FLOORS For the third to eleventh floors, each shall contain one (1) type A unit, one (1) type A Extended unit, and eleven (11) type B units. Each floor shall also contain elevator lobbies, equipment and electrical rooms. See exhibit sheet A2.14 attached to the Declaration as submitted to the TLUC.
- e. TWELFTH FLOOR This floor shall contain one (1) type C unit, one (1) type C Extended unit, two (2) type D unit, three (3) type E units, and two (2) type F units. Also, this floor shall contain elevator lobbies, equipment and electrical rooms. See exhibit sheet A2.15 attached to the Declaration as submitted to the TLUC.
- 8. RESIDENTIAL UNITS ROOMS: The residential units basically contains:
- a. TYPE "A" UNIT This unit has a living area of $1,426\pm$ s.f. (excluding lanais), three (3) bedrooms, a living room, dressing room, kitchen, two (2) bathrooms, and two (2) lanais. One lanai, A-1, has $142\pm$ s.f., and the other, A-2, has $55\pm$ s.f.
- b. TYPE "A" EXTENDED UNIT- This unit has a living area of 1,515 \pm s.f. (excluding lanais), three (3) bedrooms, a living room, dressing room, kitchen, two (2) bathrooms, and two (2)

lanais. One lanai, AE-1, has $189\pm$ s.f., and the other, AE-2, has $55\pm$ s.f.

- c. TYPE "A" EXTENDED LANAI UNIT living area of 1,426 \pm s.f. One lanai, AEL-1, has 142 \pm s.f., and the other, AEL-2, has 184 \pm s.f.
- TYPE "B" UNIT This unit has a living area of 1,157± s.f. The basic type "B" unit contains three (3) bedrooms. a dining room, living room, kitchen, two (2) bathrooms and a lanai, B-1, of 122± s.f.; however, for the purpose of meeting the individual buyer's desires or needs in the floor plan of this type "B" unit, Developer reserves the right to modify or alter the floor plan of all type "B" units without modifying or altering the perimeter or common element walls. Further, the Developer reserves the right to sell type "B" units as a "shell", that is without any partition walls or finish work, or with any portions thereof, to be completed or finished later by the ultimate buyer or the Developer. If the Developer, or through its contractor, shall finish or complete the unit for the buyer at a later date, then the approval of the floor plans, drawings, specifications etc. by the Association shall not be required and upon completion thereof, a copy of the floor plans, etc shall be submitted to the Association for its files and records. However, if the buyer is to finish or complete the unit then prior to any work therein the buyer shall submit plans, drawings, and specifications to the Association for its approval. The Association shall not unreasonably withhold approval of the buyer's plans, etc. and such buyer shall see that the improvements and construction work do not damage the perimeter or common element walls, that such comply with the Declaration as submitted to the TLUC and all condominium documents, and that such meet all building-codes and requirements.
- e. TYPE "B" EXTENDED LANAI UNIT This unit is the same as the basic type "B" unit, except for the lanai, which is larger for the type "B" EXTENDED LANAI unit. This type "B" EXTENDED LANAI unit has a living area of 1,157± s.f., contains three (3) bedrooms, a dining room, living room, kitchen, two (2) bathrooms and a with a lanai, BEL-1, of 413± s.f. The floor plan for this type "B" EXTENDED LANAI unit is fixed and not subject to change as may be typical of the type "B" unit as described above.
- f. TYPE "C" UNIT This is a penthouse unit with two (floors). The first floor of this unit has a living area of 2,394± s.f., excluding the lanais. This unit has a mezzanine with 1,081± s.f. and the unit contains a kitchen, five (5) bedrooms (two on the first floor and two plus a guest room on the mezzanine), a family room, living room, dining room, four bathrooms (two on each floor), and a laundry room. The total living area, excluding the lanais, is 3,475± s.f. There are three (3) lanais: C-1 has 174± s.f., C-2 has 55± s.f., and C-3 has 292± s.f.
- g. TYPE "C" EXTENDED UNIT The first floor of this unit has a living area of 2,448 \pm s.f., and the mezzanine has 1,081 \pm s.f.. The total living area, excluding the lanai, is 3,529 \pm s.f. This unit has three lanais: CE-1 has 260 \pm s.f., CE-2 has 55 \pm s.f., and CE-3 has 292 \pm s.f.
- h. TYPE "D" UNIT This unit contains two floors. The first floor has a living $2,000\pm$ s.f., excluding the lanais, and the mezzanine has $1,037\pm$ s.f.. The total living area, excluding the lanais, is $3,037\pm$ s.f. There are two (2) lanais, one, D-1, has $292\pm$ s.f., and the other has $292\pm$ s.f. This unit has a living room, dining room, kitchen, laundry, four (4) bedrooms (one on the first floor and three on the mezzanine), and three bathrooms (one on the first floor and two on the mezzanine).
- i. TYPE "E" UNIT This unit has two (2) floors. The first floor has a living area of $987\pm$ s.f., excluding the lanal, and the mezzanine has $535\pm$ s.f. It has one (1) lanal, E-1, of $292\pm$

- s.f.. The total living area, excluding the lanai, is $1,522\pm$ s.f. This unit has a living room, dining room, kitchen, laundry, three (3) bedrooms (two on the first floor and one on the mezzanine), and two bathrooms (one on each floor).
- j. TYPE "F" UNIT This unit has two (2) floors. The first floor has a living area of 1,207 \pm s.f., excluding the lanais, and the mezzanine has 697 \pm s.f.. This unit has two (2) lanais, one, F-1, has 292 \pm s.f., and the other, F-2, has 148 \pm s.f. The total living area, excluding the lanais, is 1,904 \pm s.f.
- 9. UNITS CONTENTS: In general, the condominium units shall contain the following:
- a. Each residential unit shall have a built-in microwave oven, washer/dryer, dishwasher, refrigerator, stove, and garbage disposal. Each unit shall have a separate sub-meter for power. Each residential unit shall have an audio/video access control system arrangements for security purposes.
- b. All units shall also have pipes, risers, lines, circuitry and ducts which provide water, etc. to more than one unit. All pipes, risers, lines, circuitry and ducts which serve more than one unit shall be a part of the common elements are depicted on the drawings as filed with the Department of Public Works and various agencies of the government.
- c. Various areas of each unit shall have dropped ceilings to contain the air-conditioning duct work. The air-conditioning duct work and dropped ceiling shall be the exclusive property of the unit owner.
- 10. RESIDENTIAL UNIT DESIGNATIONS: The residential units on each floor shall be designated as set forth below and shall be located on the particular floor according to the referenced exhibits which is attached to the Declaration as submitted to the TLUC:

Second Floor (12 units): Units 200 to 211; exhibit sheet A2.12 Third Floor (13 units): Units 300 to 312; exhibit sheet A2.14 Fourth Floor (13 units): Units 400 to 412; exhibit sheet A2.14 Fifth Floor (13 units): Units 500 to 512; exhibit sheet A2.14 Sixth Floor (13 units): Units 600 to 612; exhibit sheet A2.14 Seventh Floor (13 units):Units 700 to 712; exhibit sheet A2.14

Ninth Floor (13 units): Units 900 to 912; exhibit sheet A2.14
Tenth Floor (13 units): Units 1000 to 1012; exhibit sheet

A2.14

Eighth Floor (13 units): Units 800 to 812; exhibit sheet A2.14

Eleventh Floor (13 units):Units 1100 to 1112; exhibit sheet A2.14

Twelfth Floor (9 units): Units 1200 to 1208; exhibit sheet A2.15

11. COMMERCIAL UNIT DESIGNATIONS: The commercial unit within the 12 story building, on the ground level is commercial unit #1, and the commercial unit within the outside connected building is commercial unit #2.

12. AIR-CONDITIONING:

- a. Residential units types A, A Extended and A Extended Lanai on the second floor to the eleventh floor shall be cooled by central air-conditioning units with condensers located on the mechanical platforms, adjacent to stairway no. 2, as depicted on the drawings.
- b. All other residential units on the third to the eleventh floors shall be cooled by central air-conditioning units with condensers located in the air conditioning closets within the units.
- c. Residential units on the twelfth floor shall be cooled by central air-conditioning units with condensers located on the exterior mechanical spaces.
- d. Commercial unit #1 shall have a separate cooling system located within its premises with condensers on the exterior mechanical spaces designated as L.C.A. NO. 1-5 on the drawings.
- e. Commercial unit #2 shall have a separate cooling system located within its premises with condensers on the exterior mechanical spaces designated as L.C.A. NO. 2-4.
- f. All air-conditioning equipment, lines, pipes and ducts located in the common areas but <u>serving only one unit</u> (up to and including the point of connection to lines, pipes, risers and ducts serving more than one unit) shall not be a common element but shall be a fixture or property belonging to the particular unit or unit owner and such shall be maintained, replaced or repaired at the expense of the particular unit owner.

13. LIMITS OF UNITS:

- a. Each unit is basically the air space within the perimeter concrete structure walls. Each unit shall not include the perimeter concrete structure walls or interior load-bearing walls, columns, vertical supports, horizontal supports, the floors and concrete ceilings surrounding each unit. Each unit shall not include any pipes, risers, wires, conduits or other utility lines running through the concrete walls and floors, and the pipe chase or central chute and lines or pipes in such unit which are utilized for or serve more than one unit, the same being deemed common elements. All lanais shall be limited common elements.
- b. Each unit shall be deemed to include: all the walls and partitions within the unit which are not load-bearing within its perimeter walls; the inner decorated and/or finished surfaces, and/or surface coverings of all perimeter concrete structure walls, floors and ceilings, including but not limited to the painted surfaces, wall paper, gypsum boards and other coverings on the perimeter concrete structure walls, floors and ceilings; the dropped ceiling and fan coils and duct work located therein; and any other pipes, lines or ducts serving that particular unit only.
- c. Each unit shall have an audio/video access control system for the main lobby entrance on the ground floor. The audio/video access control system as located within the unit shall belong to the owner of the unit and shall be maintained and fixed at the owner's cost.
- d. Each unit shall have its own air conditioning equipment. The air conditioning equipment as located on the mechanical areas on the second floor shall belong to the particular unit that it serves on the second floor and the air conditioning equipment on the lanais on all other residential units shall belong to the residential unit that it serves.

- 14. PARKING: There shall be a total of 225 parking spaces for the entire Project: 168 covered parking spaces (138 at the lower level and 30 at the plaza level) and 57 open parking spaces at the plaza level. Each residential unit shall have at least one (1) assigned parking space. Commercial unit #1 shall have 32 assigned spaces (designated as CU #1 on the plans), and commercial unit #2 shall have 11 assigned spaces (designated as CU #2 on the plans). Three (3) spaces shall be designated for the handicapped. Twenty five (25) spaces shall be designated as "C/R", COMMERCIAL/RESIDENTIAL, which shall be for the split use or shared by the commercial and residential units (including guests). See exhibit sheets A2.1 and A2.2 attached to the Declaration as submitted to the TLUC for the assigned spaces to the individual units.
- 15. COMMON ELEMENTS: The common elements shall include all portions of the land and improvements other than the units and specifically shall include, but shall not be limited to:
- a. all foundations, floor slabs, columns, girders, beams, supports, bearing walls and lines or pipes as located in such bearing walls, perimeter walls and fences, roofs, corridors, lobbies, entry halls, stairs located outside of the units, walkways outside of the units, and entrances and exits outside of the units for said buildings;
- b. all lower levels, parking levels or floors, pool decks, halls, walkways, elevators, elevator shafts and lobbies, and mechanical, electrical and storage rooms (except the storage lockers which shall be limited common elements). The generator providing emergency power and serving the units in a limited capacity shall be a common element;
- c. all areas and rooms on the ground or plaza level in the 12 story building, excluding commercial unit #1;
- d. the audio/video access control system located in the common area on the ground floor and the lines and associated circuitry within the common elements;
- e. all yards, grounds, landscaping, fencing or walls in the yards or surrounding the property, refuse grounds and facilities, walkways and appurtenant facilities; all driveways and non-assigned parking areas and all parking stalls for guest parking;
- f. all sewer lines, electrical equipment, wiring and other central and appurtenant installations for services for the benefit of all units and all the pipes, risers, lines, circuitry and ducts which serve more than one unit;
- g. the swimming pool, sun deck, outside showers and surrounding facilities; all roof areas and all stairways outside of the units, and elevators;
- h. the cost of maintenance of the park adjacent to the ALUPANG BEACH TOWER, said park belonging to the government as located on Lot No. 2015-1REM NEW-R2 and on any adjacent government land. The Association shall be obligated to maintain this park pursuant to an agreement with the government as described in the Declaration as submitted to the TLUC; and
 - i. the limited common elements described below.
- 16. LIMITED COMMON ELEMENTS: Certain parts of the common elements, herein called and designated "limited common elements," are hereby set aside and reserved for the exclusive use of certain units, and such units shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside and reserved are as follows:

- a. the assigned automobile parking spaces as designated for the owner of a unit;
- b. the storage rooms and lockers as located in the lower level of the 12 story building are assigned for the particular unit owner's use. The lockers are assigned to the particular units as set forth in exhibit sheet A2.2 attached to the Declaration as submitted to the TLUC;
- c. each entryway adjoining a unit shall be appurtenant to and for the exclusive use of such unit which it adjoins; all lanais and any metal railings attached thereto;
- d. all audio/video access control systems located outside of the units but serves only one (1) unit;
- e. limited common elements for commercial unit #1 are designated on the drawings (see exhibit sheets A2.10 and A2.12 attached to the Declaration as submitted to the TLUC) as L.C.A. NOS. 1-1 to 1-5:
 - i. L.C.A. NO. 1-1 exterior area of 423± s.f. on the boardwalk at grid lines A-9 for use reasonably related to business of commercial unit #1; provided, however, this area shall not be enclosed and unit owners, and their guests, shall be allowed to freely pass through, or sit in this area. Further restrictions concerning the use of this limited common element is set forth below under the section entitled "FASEMENTS".
 - 1i. L.C.A. NO. 1-2 non-exclusive use of the roof area on commercial unit #2 for 500 gallon LPG tank, with reasonable access thereto.
 - iii. L.C.A. NO. 1-3 non-exclusive use of the entire underside of the plaza level structural floor system for commercial unit #1's use for pipes and distribution systems; for more detailed terms of this use, see the paragraph or section on "EASEMENTS" below in the Declaration as submitted to the TLUC.
 - tv. L.C.A. NO. 1-4 area of 175± s.f. for condensing units CU-323, CU-324, CU-325, CU-326, CU-328 and CU-329, serving commercial unit # 1.
 - v. a non-exclusive easement through that portion of the perimeter wall of commercial unit #1 that is located above the emergency generator room and on the roof top of the emergency generator room may be used by commercial unit #1 to locate and place exhaust lines or ducts, or lines or ducts for return air. The owner of commercial unit #1 shall have the nonexclusive right to place and locate said ducts and lines through the said perimeter wall over the roof of the emergency generator room and to place and locate the same and other related equipment on or over the said emergency generator room. Provided, however, prior to the installation of such lines, ducts and related equipment, the owner of commercial unit #1, or its designee, shall submit drawings, designs and specifications for the same to the Board for approval. The Board shall approve the same unless the Board shall be able to establish that such shall endanger the

structural integrity of the wall or roof, or that such shall unreasonably interfere with the use and operation of the common areas for the benefit of the entire condominium project. The owner of commercial unit #1 shall cause such lines, ducts and related equipment to "blend in" to the surroundings or to not be unsightly whenever possible, and shall comply with all building codes and regulations. The cost of installation, maintenance, repairs replacement of such lines, ducts and related equipment, which benefit only commercial unit #1, shall be paid by commercial unit #1.

vi. the owner of commercial unit #1 shall keep the easement areas set forth above in a clean and orderly condition at its expense, except for L.C.A. NO. 1-3 which shall be cleaned by the Association, but the owner of commercial unit #1 shall keep it clean and clear of its own debris.

limited common elements for commercial unit #2 are designated on the drawings (see exhibit sheets A2.8 and A2.10 attached to the Declaration as submitted to the TLUC) as L.C.A. NOS. 2-1 to 2-4

> i. L.C.A. NO. 2-1 - balcony area (outdoor deck) of 1,347± s.f., for use reasonably related to . the business of commercial unit #2; provided, thic area --- 1 not be enclosed and

> > 115

jests, shall be allowed or sit in this area. incerning this limited forth below under the ENTS".

a of 294± s.f., for below grade.

to the lower level for

a of 91± s.f., for 7 and CU-318, serving

unit #2 shall keep the h above in a clean and s expense.

ijacent to the ALUPANG REM NEW-R2 and on any ned by the Association

A contract for the AINTENANCE AGREEMENT", act", is being made by benefit of the ALUPANG d by Developer that the k contract is hereby a UPANG BEACH TOWER, and , accepts and agrees to ract.

as within or concerning he property of the unit

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the owner. The unit owner shall be responsible for and shall maintain, at its expense, the following:

- a. as to items within the unit, the dropped ceiling and air-conditioning fan coil and duct work between the concrete ceiling and the dropped ceiling;
- b. as to items outside of the unit, any air conditioning pipes, lines, wires, ducts, and equipment which exclusively serve one unit shall belong to and shall be the responsibility of the particular unit it serves;
 - c. any non-load bearing wall within the unit;
- 19. PERCENTAGE OF UNDIVIDED INTEREST: Each unit shall have an undivided interest in the common elements and limited common elements appurtenant to each unit for all purposes, including voting. The undivided interest in the common elements and limited common elements for each unit are as follows:

UNIT TYPE	* OWNERSHIP	NO. OF UNITS	TOTAL %
A	.761854	9	6.856686
A EXT.	.809403	10	8.094030
A EXT. L	.761854	1	.761854
В	.618138	107	66.140766
B EXT. L	.618138	2	1.236276
С	1.856551	1	1.856551
C EXT.	1.885410	1	1.885410
D	1.622546	2	3.245092
E	.813143	3	2.439429
F	1.017230	2	2.034460
CU #1	3.163884	1	3.163884
CU #2	2.285562	1	2.285562
	41 1 1 1		
	TOTALS:	138 UNITS 2 COMMERCIAL	100.000000

- 20. EASEMENTS: In addition to any exclusive easements hereby established in the limited common elements, the units and common elements shall also have and be subject to the following easements:
- a. each unit shall have appurtenant thereto non-exclusive easements in the common elements for the purposes support, maintenance and repair of such unit. Each unit shall also have an easement in and to the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided herein. Further, each unit shall have an easement in and through all other units and limited common elements of its building or structure for support, maintenance and repairs;
- b. if any part of the common elements now or hereafter encroaches upon any unit or limited common element, or if any unit now or hereafter encroaches upon any other unit or upon any portion of the common elements, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. In the event any building shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the common elements upon any unit or of any unit upon any other unit or upon any portion of the common elements due to construction shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist;
- c. the Association shall have the right to be exercised by its Board of Directors (hereinafter called "Board") or its designee, to enter such unit and the limited common elements from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein necessary to prevent damage to any unit or common elements;
- d. each unit owner shall have an easement in common with the owners of all other units to use all pipes, risers, wires,

ducts, cables, conduits, public utility lines and other common elements located in any of the other common elements serving such other units and located in such unit;

- e. the entire property above is subject to any and all easements of record with the Department of Land Management, Government of Guam, particularly that Grant of Easement, instrument no. 328385; Grant of Right of Way, instrument no. 331147; Mortgage, instrument no. 413754; Mortgage, instrument no. 458497; First Amendment to Mortgage, instrument no. 458498; and Partial Release of Mortgage, instrument no. 458499. All units shall be conveyed free and clear of the said mortgages at the time of closing.
- f. commercial unit #1 shall have an easement to and on certain areas designated on the drawings as L.C.A. NOS. 1-1 to 1-5. Commercial unit #1 shall have the right of ingress, egress and use of said L.C.A. NOS. 1-1 to 1-5 for the following purposes:
 - L.C.A. NO. 1-1 the exterior area of 423± s.f. on the boardwalk at grid lines A-9 for use reasonably related to business of commercial unit #1; provided, however, this area shall not be enclosed and unit owners, and their guests, shall be allowed to freely pass through, or sit in this area. The owner of commercial unit #1 shall not place any equipment, furnishings or objects in this area to impede pedestrian passage. Chairs, benches, tables and trash receptacles shall be allowed. Signs on the boardwalk of reasonable size, as approved by the Board, shall be allowed.
 - 11. L.C.A. NO. 1-2 the non-exclusive use of the roof area on commercial unit #2. Commercial unit #1 shall have the right to use this area only for the storage of commercial unit #1's LPG gas tank(s) with reasonable access thereto.
 - iii. L.C.A. NO. 1-3 commercial unit #1 shall have a non-exclusive easement to use the entire underside of the plaza level structural floor system for the placement or location of commercial unit #1's pipes and distribution systems as may be needed for its operations. These pipes and distribution systems shall at all times, when placed or located on the underside of the plaza level structural floor, be at least seven (7) feet above the finished basement floors. Provided, however, prior to the installation of such pipes and distribution systems, the owner of commercial unit #1, or its designee, shall submit drawings, designs and specifications for the same to the Board for approval. The Board shall approve the same unless the Board shall be able to establish that such shall endanger the structural integrity of the walls, floors, foundations, etc., or that such shall unreasonably interfere with the use and operation of the common areas for the benefit of the entire condominium project. The owner of commercial unit #1 shall cause such pipes and distribution systems to "blend in" to the surroundings or to not be unsightly whenever possible, and shall comply with all building codes and regulations. The cost of installation, maintenance, repairs and replacement of such pipes and distribution systems, which benefit only commercial unit #1, shall be paid by commercial unit #1.

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- iv. L.C.A. NO. 1-4 area of 175± s.f. for condensing units CU-323, CU-324, CU-325, CU-326, CU-328 and CU-329, serving commercial unit # 1.
- L.C.A. NO. 1-5 a non-exclusive easement through that portion of the perimeter wall of commercial unit #1 that is located above the emergency generator room and on the roof top of the emergency generator room may be used by commercial unit #1 to locate and place exhaust lines or ducts, or lines or ducts for return air. The owner of commercial unit #1 shall have the non-exclusive right to place and locate said ducts and lines through the said perimeter wall over the roof of the emergency generator room and to place and locate the same and other related equipment on or over the said emergency generator room. Provided, however, prior to the installation of such lines, ducts and related equipment, the owner of commercial unit #1, or its designee, shall submit drawings, designs and specifications for the same to the Board for approval. The Board shall approve the same unless the Board shall be able to establish that such shall endanger the structural integrity of the wall or roof, or that such shall unreasonably interfere with the use and operation of the common areas for the benefit of the entire condominium project. The owner of commercial unit #1 shall cause such lines, ducts and related equipment to "blend in" to the surroundings or to not be unsightly whenever possible, and shall comply with all building codes and regulations. The cost of installation, maintenance, repairs and replacement of such lines, ducts and related equipment, which benefit only commercial unit #1, shall be paid by commercial unit #1.
- g. <u>commercial unit #2</u> shall have an easement to and on certain areas designated on the drawings as L.C.A. NOS. 2-1 to 2-4. Commercial unit #2 shall have the right of ingress, egress and use of said L.C.A. NOS. 2.1 to 2.4 for the following purposes:

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- L.C.A. NO. 2-1 balcony area (outdoor deck) of 1,347± s.f., for use reasonably related to the business of commercial unit #2; provided, however, this area shall not be enclosed and unit owners, and their guests, shall be allowed to freely pass through, or sit in this area. The owner of commercial unit #2 shall not place any equipment, furnishings or objects in this area to impede pedestrian passage. Chairs, benches, tables and trash receptacles shall be allowed. Signs on the balcony area are allowed provided such are of reasonable size, as approved by the Board.
- ii. L.C.A. NO. 2-2 area for gasoline storage tank and other equipment reasonably necessary for commercial unit #2's operations.
- iii. L.C.A. NO. 2-3 ramp to the lower level for access purposes.
- iv. L.C.A. NO. 2-4 area of 91± s.f., for condensing units CU-317 and CU-318, serving commercial unit #2.

- each commercial unit owner shall have the right to install pipes, ducts and distribution systems through the common element walls or roofs of its particular commercial unit; provided that such pipes, ducts and distribution systems are reasonable in number, are necessary for its operation, are in compliance with all building codes and regulations, does not endanger the structure of the building or walls, shall not unreasonably interfere with the use and operation of the common areas for the benefit of the entire condominium project, shall not create a nuisance, and such shall not cause a material detraction from the attractiveness of the condominium project. Prior to the installation of such pipes, etc. the commercial unit owner shall first obtain the approval of the Association and the Association shall not unreasonably withhold such approval. The owner of particular commercial unit benefiting from the use of such easement shall pay for all costs relating thereto, including but not limited to repairs, maintenance. replacement, etc.
- i. if the particular use by a commercial unit causes an increase in the insurance policies covering the common areas or common elements, then applicable commercial unit owner shall be liable for such increase in the insurance cost.
- 21. ALTERATION AND TRANSFER OF INTERESTS: The common element interest and easements appurtenant to each unit shall have a permanent character and shall not be altered without the consent of all of the unit owners affected, expressed in an amendment to the Declaration as submitted to the TLUC, and duly recorded with the Department of Land Management, Government of Guam. The common element interest and easements shall not be separated from the unit to which they appertain and shall be deemed to be conveyed, leased or encumbered with such unit even though such interest or easements are not expressly mentioned or described in the conveyance or other instrument.

22. USE:

- a. All residential units shall be used for residential purposes and may be leased, rented and subletted for any term or period. All commercial units may be used by the owner for any commercial or business use allowed by law.
- b. The common elements and limited common elements shall be used for the purposes set forth in the Declaration as submitted to the TLUC, and for any other purpose which may best serve the needs of the Association. The Association may lease out portions of the common elements, or change the use of such common elements, provided 75% the unit owners, based on their common interest, approve such lease or change of use.
- c. The owner of a unit shall not use the unit and common elements for any purposes which will injure the reputation of the building. Such owner shall not suffer anything to be done or kept in said unit or elsewhere which will jeopardize the soundness of the buildings, or which will interfere with or unreasonably disturb the rights of other owners, or which will obstruct the stairways of the building, or which will increase the rate of fire insurance on the building or the contents thereof or which will reduce the value of the building.

23. RENOVATION & REMODELING:

a. Residential Units - The owner of a residential unit shall not, without the prior written consent of the Board, make any structural alterations in or additions to the unit or make any alterations in or additions to the exterior of the unit or to any other portion or portions of the common elements and limited common elements including any pipes or lines within a unit and connecting with lines within the pipe chases or central chutes, unless otherwise provided by the Declaration as submitted to the TLUC,

By-Laws or rules and regulations. The owner of a residential unit may, however, renovate or remodel the interior of his or her residential unit provided such renovation or remodeling first receives the approval of the Board, and such renovation or remodeling shall only be to the surfaces of the walls, floors and/or ceiling, or to non-load bearing walls, or which shall not affect the common areas in any material or detrimental way whatsoever. The Board shall have the right to request copies of drawings and specifications to be submitted to the Board in order for it to make a decision on the matter.

- Commercial Units The owners of the commercial units shall have the right to remodel, renovate and alter the interior of the commercial units without Board approval, provided, that such remodelling, renovation and alteration concerns and affects only the interior of the unit and the surfaces of the load bearing walls, floors, and other common elements. Examples of such permitted remodelling, etc. without Board approval are painting, wallpapering, re-carpeting, floor tiles, removal and replacement of non-load bearing partitions, etc. Provided, however, such remodelling may be performed without the approval of the Board only if the Board receives notice of such intended remodelling at least sixty (60) days prior to the start of such work and such notice is accompanied by drawings and specifications, and simultaneously the owner submits a statement certified by an architect, licensed on Guam, that such remodelling, etc. shall not detrimentally affect any load bearing walls or cause any structural damage. The purpose of such notice is to give the Board an opportunity to review the drawings, etc. to see that the load bearing walls and the common elements and structures are not affected by the remodelling, and that the particular owner shall comply with the terms and conditions of the Declaration as submitted to the TLUC. If the Board fails to notify the commercial unit owner of any objections within 60 days after the date the Board has received the request for approval and all related drawings, specifications and documents, then it shall be deemed that the Board has no objection and the commercial unit owner may proceed with such remodelling and renovation. The owner of the particular commercial unit shall not commence work if the Board has any reasonable objection. The Board shall have the right to stop any remodeling, or renovation work if the Board determines, at any time, that the load bearing walls shall be affected or that the particular owner is or shall violate the terms and conditions of the Declaration as submitted to the TLUC. Except as specifically provided above and in the condominium documents for this Project, all other remodelling, renovation and alteration shall first require the approval of the Board.
- 24. ADMINISTRATION OF PROJECT: Administration of the Project shall be vested in the ALUPANG BEACH TOWER Owners Association, also referred to in the Declaration (as submitted to the TLUC) as the "Association", consisting of all unit owners of the Project in accordance with the By-Laws of the Association which shall be filed with the Department of Land Management, Government of Guam as a separate instrument and made a part of the documents. The Association shall operate by or through its Board of Directors as established by the By-Laws. These By-Laws are hereby incorporated herein by reference. Operation of the Project and maintenance, repair, replacement and restoration of the common elements, and any additions and alterations thereto, shall be in accordance with the provisions of said Horizontal Property Act, the Declaration (as submitted to the TLUC) and the By-Laws, and specifically but without limitation the Association shall:
- a. make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained, and repaired upon or adjoining or in connection with or for the use of the Project or any part thereof;

- b. keep all common elements of the Project in a strictly clean and sanitary condition, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Project or the use thereof;
- C. repair, maintain, amend and keep all common elements of the Project, including without limitation the buildings thereof, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided herein, and maintain and keep said land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass thereon in good cultivation and replant the same as may be necessary, and repair and make good all defects in the common elements of the Project herein required to be repaired by the Association, of which notice shall be given by any owner or his agent, within thirty (30) days after the giving of such notice;
- d. before commencing or permitting construction of any improvement on the Project, obtain and deposit with the Association a performance and material and payment bond or certificate thereof naming as obligees the Association and any other unit owners as their interests may appear, with a corporate surety authorized to do business in Guam guaranteeing completion of such construction free and clear of all mechanic and materialmen's liens;
- e. observe any setback lines affecting the Project as may be depicted on said condominium drawings, and not erect, place or maintain any building or structure whatsoever except approved fences or wall between any street boundary of the Project and the setback line along such boundary;
- f. have the right, to be exercised by its Board or its designee, to enter any units and limited common elements from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein required to prevent damage to any units or common elements or for the installation, repair or replacement of any common elements;
- g. not erect or place on the Project any building or structure including fences and walls, nor make additions or structural alterations to or exterior changes of any common elements of the Project except in accordance with condominium drawings and specifications including detailed plot plan, prepared by a licensed architect if approved by the Association and by a majority of unit owners (or such larger percentage as required by law or the Declaration as submitted to the TLUC) including all owner of units thereby directly affected, (as determined by the Board) and complete any such improvements diligently after the commencement thereof:
- h. not make or suffer any strip or waste or unlawful, improper or offensive use of the Project;
- 25. MANAGING AGENT: The Association, via its Board of Directors, shall appoint a responsible managing agent to manage the Project.
- 26. SERVICE OF PROCESS: Once the Association is established, then each member of the Board of Directors, on behalf of the Association is hereby authorized to receive service of legal process as provided in said Horizontal Property Act. The Board of Directors, and each individual member thereof, shall not receive compensation for acting as agent to receive service of legal process. However, until such time the Association is established, each officer of the General partners of ABC Associates is hereby authorized to receive service of process.

- 27. OWNER'S PERSONAL PROPERTY INSURANCE: The Association shall not be liable for any damage caused to any personal property in each unit by earthquake, fire, typhoon, storm or other casualties. Each owner of a unit shall have the obligation to maintain his own insurance on his personal property, furniture, carpets, floor coverings, cabinets and the contents or fixtures in his unit. Such insurance shall cover water damage or other damages from earthquake, fire, typhoon, storm or other casualties not covered by the common element insurance.
- 28. COMMON EXPENSES: All charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration of the Project, including without limitation, the operation thereof, any maintenance, repair, replacement and restoration of the common elements and limited common elements and any additions and alterations thereto, any labor, services, materials, supplies and equipment therefore, any liability whatsoever for loss or damage arising out of or in connection with the common elements or any accident, fire or nuisance thereon, and any premiums for hazard and liability insurance herein required with respect to the Project, shall constitute common expenses of the Project for which all unit owners shall be severally liable in proportion to their respective common interests. The Board shall from time to time assess the common expenses against all the units in their respective proportionate shares, or may charge or levy special assessments or fines as may be allowed by the By-Laws or rules and regulations of the Project, and the unpaid amount of such assessments or fines against any unit shall constitute a lien against such unit which may be foreclosed by the Board or Managing Agent as provided by said Horizontal Property Act, provided that thirty (30) days prior written notice of intention to foreclose shall be mailed, postage prepaid, the unit owner and all other persons having any interest in such unit as depicted in the Department of Land Management, Government of Guam.
- 29. DAMAGES TO COMMON OR LIMITED COMMON ELEMENTS: The Association shall, at its expense, repair, maintain and replace all common element and limited common elements. All common elements and limited common elements shall be insured according to the Declaration (as submitted to the TLUC) and By-Laws as applying to this Project. However, if any common element or limited common element is damaged through the fault, action or inaction, or negligence of a particular unit owner, its agents, tenants, family, guests, servants or invitees, then such cost shall be assessed to or the responsibility of the particular unit owner. The Association shall have the right to repair the same and if the particular unit owner fails to pay the Association the cost of repairs, such shall constitute a lien against the particular owner's unit.
- 30. COMPLIANCE WITH DECLARATION (AS SUBMITTED TO THE TLUC)
 AND BY-LAWS: All unit owners, their tenants, agents, families, servants, guests, and any other persons who may in any manner use the Project, shall be bound by and comply strictly with the provisions of the Declaration (as submitted to the TLUC), the By-Laws for the Association and all agreements, decisions and determinations of the Association as lawfully made or amended from time to time, and failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board or Managing Agent on behalf of the Association, or, in a proper case, by any aggrieved unit owners.

31. INSURANCE:

a. The Board on behalf of the Association, at its common expense, shall at all times keep all buildings of the Project insured against loss or damage by fire, typhoon, water, and earthquake, with extended coverage in an insurance company authorized to do business in Guam in an amount not less than 80%

of, as near as practicable, the full replacement cost thereof, in the name of the Board as trustee for all unit owners and mortgagees according to the loss or damages to their respective units and appurtenant common interest, and payable in case of loss to such bank or trust company authorized to do business in Guam as the Board shall designate for the custody and disposition as herein provided of all proceeds of such insurance, and from time to time upon receipt thereof cause to be deposited promptly with the trustees true copies of such insurance policies or current certificates thereof, without prejudice to the right of each unit owner to insure his unit for his own benefit. In every case of such loss or damage, all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the original drawings and elevation thereof or such modified drawings conforming to the laws and ordinances then in effect as shall be first approved as herein provided, and the Association at its common expense shall make up any deficiency in such insurance proceeds. The Association shall assess the unit owners for such deficiency. Whenever possible, every such policy of insurance shall:

- i. provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration or contribution by reason of, any other insurance obtained by or for any unit owner;
- liability for loss occurring while the hazard to such buildings is increased, whether or not within the knowledge or control of the Board, or because of any breach or warranty or condition or any other act or neglect by the Board or any unit owner or any other persons under either of them;
- iii. provide that such policy may not be cancelled (whether or not requested by the Board) except by the insurer giving at least sixty (60) days prior written notice thereof to the Board, trustees and every other person in interest who shall have requested such notice of the insurer;
- iv. contain a waiver by the insurer of any right of subrogation to any right of the Board, or unit owners against any of them or any other persons under either of them;

y. contain a standard mortgagee clause which shall:

- (1) provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any unit or unit lease of the Project, in their respective order and preference, whether or not named therein;
- (2) provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board, fee owner or unit owners or any persons under any of them;
- (3) waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause; and;
- (4) provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by the Board.

- b. The Board on behalf of the Association at its common expense shall also effect and maintain at all times comprehensive general liability insurance covering all unit owners with respect to the Project and the Association as additional assureds, in an insurance company authorized to do business in Guam with minimum limits of hot less than \$500,000.00 for injury to one person and \$2,000,000.00 (if available on Guam) for injury to more than one person in any one accident or occurrence and \$100,000.00 for property damage. This insurance shall be without prejudice to the right of any unit owners to maintain additional liability insurance for their respective unit.
- 32. CONDEMNATION: In case at any time or times the Project or any part thereof shall be taken or condemned by any authority having the power of eminent domain, or shall be sold to such authority under threat of condemnation, all compensation and damages for or on account of any fee simple interest in the land and improvements on the Project shall be payable to such bank or trust company authorized to do business in Guam as the Board shall designate as trustee for all apartment unit owners and mortgagees according to the loss or damage to their respective units and appurtenant common interests and shall be used promptly by the Association to the extent necessary for restoring or replacing such improvements on the remaining land according to the condominium drawings on file with the applicable government agencies unless such restoration or replacement is impractical. Unless such restoration or replacement is undertaken within a reasonable time after such condemnation the Association at its common expense shall remove all remains of such improvements so taken or condemned and restore the site thereof to good orderly condition and even grade.
- 33. UNINSURED CASUALTY: In case at any time or times any improvements of the Project shall be substantially damaged or destroyed by any casualty not herein required to be insured against, whether to rebuild, repair, or restore such improvements shall be determined by affirmative vote of seventy-five percent (75%) of the unit owners, based on their common interest in each unit. Any such approved restoration of the common elements shall be completed diligently by the Association as a common expense according to the original drawings and elevation thereof or such drawings first approved, or as amended as provided in the Declaration as submitted to the TLUC. Unless such restoration is undertaken within a reasonable time after such casualty, the Association at its common expense shall remove all remains of improvements so damaged or destroyed and restore the site to a good orderly condition and even grade.
- 34. ALTERATION OF PROJECT: Major restoration or replacement on or appurtenant to the Project of any building, or construction or structural alteration or addition to any building, different in any material respect from said condominium drawings of the Project, shall be undertaken by the Association or any unit owner only pursuant to an amendment of the Declaration as submitted to the TLUC, duly executed by or pursuant to the affirmative vote of 75% the unit owners, based on their common interest, and accompanied by the written consent of the holders of all liens (if the lien holders require such consent) affecting any of the units, and in accordance with complete drawings and specifications therefore first approved in writing by the Board, and promptly upon completion of such restoration, replacement or construction, the Association shall duly record or file of record such amendment together with a complete set of drawings of the Project as so altered, certified as built by a registered architect or professional engineer; PROVIDED, HOWEVER, that notwithstanding any provision in the Declaration as submitted to the TLUC to the contrary, any alterations or additions, by a unit owner, within a unit or within a limited common element appurtenant to and for the exclusive use of such unit and not affecting the common element walls or structure, shall require only the written consent thereto and written approval of the unit owner's drawings by only the

holders of all liens affecting such unit (if the lien holders require such consent and approval), the Board, all other unit owners thereby directly affected (as determined by the Board) and such alterations or additions may be undertaken without an amendment to the Declaration (as submitted to the TLUC) or without filing of a complete set of drawings of the Project as so altered.

- 35. MAINTENANCE RESERVE FUND: The Board shall establish and maintain a Maintenance Reserve Fund by the assessment of and payment by all unit owners in equal monthly installments of their respective proportionate shares of such reasonable annual amount as the Board may estimate as adequate to cover each unit owner's obligations to provide for utilities, insurance, maintenance and repair of the common elements and other expenses of administration of the Project, which shall be deemed conclusively to be a common expense of the Project. The Board may include reserves for contingencies in such assessment, and such assessment may from time to time be increased or reduced in the discretion of the Board. The proportionate interest of each unit owner in said Fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such unit even though not expressly mentioned or described in the conveyance thereof. In case the Horizontal Property Regime hereby created shall be terminated or waived, said Funds remaining after full payment of all common expenses of the Association shall be distributed to all unit owners in their respective proportionate shares except for the owners of any units then reconstituted as a new Horizontal Property Regime.
- 36. INVALIDITY: The invalidity of any provision of the Declaration as submitted to the TLUC, shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of the Declaration as submitted to the TLUC and in such event all of the other provisions of the Declaration as submitted to the TLUC shall continue in full force and effect as if such provision had never been included herein.

37. AMENDMENT:

- a. The Declaration of Horizontal Property Regime (as submitted to the TLUC) may be amended, consistent with the provisions of the statutes of Guam, by an instrument in writing signed and acknowledged by the President or Vice President and Secretary or Treasurer of the Association, and containing a certificate of the signing officers that the amendment was approved by the owners of seventy-five percent (75%) of the unit owners, as determined by using the common interest of each unit at a meeting duly called and held for that purpose. The amendment shall be effective upon recordation in the Department of Land Management, Government of Guam.
- b. The Developer reserves the right, at anytime during the first twelve months after the completion of this condominium project, to add an addendum to the Declaration as submitted to the TLUC and to record such addendum only with the signature and acknowledgement of Developer's signature only for the limited purpose of incorporating a verified statement of a registered architect or professional engineer certifying that the drawings and specifications as filed, or being filed simultaneously with such addendum, fully and accurately depict the layout, location, unit numbers and dimensions of the units as built in accordance with the requirements of the statutes of Guam.
- c. Further, as long as the Developer owns all of the units, or in other words, if none of the units have been conveyed to any purchaser, then the Developer in its own name and/or in the name of the Association shall have the sole right to terminate, withdraw, cancel and amend the Declaration (as submitted to the TLUC), the By-Laws, Rules and Regulations and any other related condominium documents.

- 38. UNPAID COMMON EXPENSES CONSTITUTE LIEN: All sums assessed by the Association for the common expenses, including special assessments or fines, chargeable to any unit shall constitute a lien on such unit prior to all other liens except only (i) liens for taxes and assessments lawfully imposed by the government against such unit, and (ii) all sums secured by mortgages of record. Such lien in favor of the Association for the common expenses may be foreclosed by suit by the Association or Managing Agent, acting on its behalf, in like manner as a mortgagee of real property, provided that the unit owner is given thirty (30) days written notice to pay the amount due and such notice shall be mailed, postage prepaid, to the Lessor, Sublessor, any Mortgagee of interest, any Mortgagee of interest, and all persons having an interest in such unit as depicted in the Department of Land Management, Government of Guam. The Managing Agent, acting on behalf of the Association pursuant to directions of its Board and Sublessor, shall have the power on behalf of the Association to bid at foreclosure sale and to acquire such unit. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The Association shall also have the right to recover attorney's fees and costs, from the particular unit owner, for the collection of the common expenses.
- 39. PERFORMANCE BY INDIVIDUAL UNIT OWNERS: Each unit owner shall perform all terms and conditions, covenants and other requirements under the Declaration of Horizontal Property Regime (as submitted to the TLUC), the By-Laws, and any other documents pertaining to the Project and if such unit owner fails to perform, the Association may bring an action for the enforcement of such terms, conditions, provisions, etc., and the cost of enforcing the same shall be a lien against the unit. Such expenses shall include and shall not be limited to court costs, attorney's fees and collection fees for the same. Prior to the enforcement of any such term and condition, the Association shall give the unit owner written notice to perform within a certain time as may be provided specifically herein for any specific breach as may be provided in any particular document concerning the Project and if no such specific time limit is provided then no less than thirty (30) days written notice. In the event of any notice of default is sent to the unit owner, a copy of such notice shall also be delivered to any mortgagee of record in the Department of Land Management, Government of Guam and/or as may be recorded with the Association.
- 40. ACQUISITION BY FORECLOSURE: Where the mortgagee of a mortgage of record or other purchaser of any unit obtains title to such unit as a result of foreclosure of the mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expense or assessments by the Association chargeable to such unit which became due prior to the acquisition of title to such unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners including such acquirer, his successors and assigns.
- 41. DEFINITIONS: The terms "majority" or "majority of unit owners" herein means the owners of units to which are appurtenant more than fifty percent (50%) of the common interests, and any specified percentage of the unit owners means the owners of units to which are appurtenant such percentage of the common interests.
- 42. LAWS OF GUAM: In the event of any conflict between the laws of Guam concerning condominiums or horizontal property regimes, and terms and conditions of the Declaration as submitted to the TLUC and any related condominium documents for this project, then the laws of Guam shall prevail.

The purchaser or prospective purchaser should be cognizant of the fact that this published Report represents information

disclosed by the Developer in the required Notice of Intention as submitted on August 8, 1991.

This PRELIMINARY KORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 092, as filed with the Commission on August 8, 1991.

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TERRITORIAL LAND USE COMMISSION Territory of Guam Planning Section Department of Land Management Government of Guam

PRANK L.G. CASTRO
Executive Secretary
Territorial Land Use
Commission

TERRITORY OF GUAM

SS:

CITY OF AGANA

On this // day of August, 1991, before me a Notary Public in and for the Territory of Guam, personally appeared FRANK L.G. CASTRO, known to me to be the Executive Secretary of the TERRITORIAL LAND USE COMMISSION, Territory of Guam, Department of Land Management, Government of Guam, whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed on behalf of the TERRITORIAL LAND USE COMMISSION, Territory of Guam, Department of Land Management, Government of Guam, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date last above written.

Notary Publics D. TAITAGUE

My commission expires

th and for the Territory of Guam/
May Commission Expires: 7/17/9

This PRELIMINARY PUBLIC REPORT for the ALUPANG BEACH TOWER, Lot Nos. 131 REV, Unit 1, & 2015-1-REM-NEW-2, Municipality of Dededo, was prepared by the Territorial Land Use Commission and reviewed by Jose Q. Taitague.

JOSE O. TAITAGUE

CERTIFICATE OF RECEIPT AND

READING OF PRELIMINARY REPORT

The undersigned hereby certifies that he has received a copy
of the PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC
REPORT on ALUPANG BEACH TOWER, Registration No. 092, as located in
the Municipality of Dededo, Territory of Guam, said Report being
issued by the Territorial Land Use Commission on August 8, 1991,
and expiring September 9, 1992; that he has had the opportunity to
read and has read said Report prior to the execution of any sales
contract and other documents for the purchase of Unit,
ALUPANG BEACH TOWER.

hour	of	this _	o'clock	m.	·	 19	at	the
		, 12 mi 13 mi	•	_	0.000			

D#E9502.1 A#95A F#4089.5 (D: 08-14-91) FERRITORY OF CHAM, DEPARTMENT OF LAND MANAGEMENT OFFICE OF THE RECORDER

INSTRUMENT NUMBER 475449

This instrument was filed for record on 2

Day of August, 19 52, at 200 and duly recorded in Book at Page People Official Recorder No.

TERRITORIAL LAND USE COMMISSION TERRITORY OF GUAM Government of Guam Agana, Guam 96910

FINAL
HORIZONTAL PROPERTY REGIMES (CONDOMINIUM)
PUBLIC REPORT ON
ALUPANG BEACH TOWER
Municipality of Dededo
Territory of Guam

REGISTRATION NO. 092

IMPORTANT -- READ THIS REPORT BEFORE BUYING

THIS REPORT IS NOT AN APPROVAL OR DISAPPROVAL OF THIS CONDOMINIUM PROJECT.

It reflects information obtained by the Territorial Land Use Commission in its investigation of the project. This Report, based on the principle of disclosure, is issued by the Commission for the purpose of preventing fraud, misrepresentation or deceit.

The Developer shall not enter into a binding contract or agreement for the sale of any unit in the condominium project unless:

- A copy of this Report has been given to the prospective purchasers;
- The prospective purchasers have been given an opportunity to read the same; and
- His receipt is taken.

ISSUED: J

July 9, 1992

EXPIRES:

August 9, 1993

SPECIAL ATTENTION

A comprehensive reading of this Report is urged in order that personal requirements and expectations to be derived from the property can be ascertained. The attention of the purchaser or prospective purchaser is particularly directed to the following:

) No 2

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED ON JUNE 12, 1991. THE DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT (TITLE VI, PART IV, DIVISION SECOND, CIVIL CODE OF GUAM, SECTIONS 1270, 1324).

The Developer is responsible for placing a true copy of this Final Public Report in the hands of all purchasers and prospective purchasers. The buyer shall sign a required receipt signifying that he has had an opportunity to read this Final Public Report.

LNFORMATION

- 1. The ALUPANG BEACH TOWER is a fee simple project condominium built by ABC ASSOCIATES. The project contains two (2) concrete buildings. One building is twelve (12) stories high and contains One Hundred Thirty-Eight (138) single family residential condominium units and two (2) commercial condominium units on the plaza level (first floor). The other building shall be a one story building, on the beach side of the property, containing a commercial condominium unit with a lower level. There is a total of Two Hundred Fifty Three (253) parking spaces for the project.
- Any purchase or prospective purchaser is advised to acquaint himself with the provision of §1228 of the Horizontal property Regimes and the rules and regulations relating to the Horizontal Property Regimes.
- 3. The basic documents, the Declaration, the By-Laws of the Homeowners' Association of the ALUPANG BEACH TOWER and a copy of the approved floor plans have been submitted and approved by the Territorial Land Use Commission and have been filed with Department of Land Management, Government of Guam, on August 3, 1992, under Instrument No. 474885. The Condominium Map No. 092 has been recorded with the Department of Land Management, Office of the Recorder, Government of Guam, on July 29, 1992, under Instrument No. 474647.
- 4. This Final Report is made a part of the registration of ALUPANG BEACH TOWER project. The Developer is responsible for placing a true copy of this Final Report (in white paper stock) in the hands of all purchasers and prospective purchaser. The securing of a signed receipt of the Horizontal Property Regimes Final Report from each purchaser and prospective purchaser is also the responsibility of the Developer.
- 5. The Developer has submitted to the Commission for its examination all documents deemed necessary for the registration of the condominium project and the issuance of this Final Report prior to the completion of construction of said project.
- 6. This Final Report, as set forth on page 1, automatically expires thirteen (13) months after the date of issuance. The date of issuance of this Final Report is July 9, 1992. The expiration date may be extended upon the issuance of a Supplementary Final Report by the Commission and upon review by the Commission of the registration, shall issue an order extending the effective period of this Final Report.
- 7. NAME: The Horizontal Property Regime hereby established shall be known as the ALUPANG BEACH TOWER.
- 8. ATTORNEY: The attorney representing the Project is the law firm of MOORE, CHING & BOERTZEL represented by Edwin K. W. Ching.

- 9. LAND DESCRIPTION: The fee simple interest of the following lots, collectively hereafter referred to in this report as the "property", are hereby submitted to the Horizontal Property Regime as set forth in this report:
 - a. Lot no. 131 Rev., Unit 1, Dededo, Guam, containing an area of 2,065 \pm .
 - b. Lot no. 2015–1–Rem-New-2, (consolidation of Lot nos, 2015–1 Rem & 2015–1–1) Dededo, Guam, containing an area of $5,474\pm$ s.m. or $58,919\pm$ s.f.
- 10. DESCRIPTION OF BUILDINGS: There shall be two connected buildings, principally constructed of reinforced concrete. One (1) building shall be twelve (12) stories high and shall contain ONE HUNDRED THIRTY-EIGHT (138) single family residential condominium units, and two (2) commercial condominium units on the plaza level (first floor). The other building shall be a one story building, on the beach side of the said property, containing a commercial condominium unit with a lower level. The 12 story building shall contain three (3) elevators and two fire stairways. There shall also be a pool and other recreational facilities as shown on the Condominium Map No. 092 for the ALUPANG BEACH TOWER, as recorded in the Department of Land Management, Government of Guam, on July 29, 1992 under Instrument No. 474647.
- 11. UNITS GENERAL: The Project shall contain 138 single family residential units, and three (3) commercial condominium units. Any reference in this Declaration to commercial unit(s) shall mean the commercial condominium unit(s). Two (2) of the commercial units are located inside the 12 story building on the first floor or plaza level, and the third (3rd) commercial unit is in a building on the beach side of the said property. Any reference to "unit(s)" within this Declaration shall mean a condominium unit or units, commercial and/or residential.
- 12. UNITS RESIDENTIAL TYPES AND SIZE OF LIVING AREAS: There are different types of residential units within the Project. The number and type of residential units are:

CONDOMINIUM UNIT TYPE	NO. OF <u>UNITS</u>	<u>UNIT AREA</u>	LANAI
"A"	9 Units	1,426± s.f.	(A-1) 142± s.f. (A-2) 55± s.f. Total 197± s.f.
"A" Extended	10 Units	1,515± s.f.	(AE-1) 189± s.f. (AE-2) 55± s.f. Total 244± s.f.
"A" Extended Lanai	1 Unit	1,426± s.f.	(AEL-1) 142± s.f. (AEL-2) 184± s.f. Total 326± s.f.
"B"	107 Units	1,157± s.f.	(B-1) 122± s.f.
"B" Extended Lanai	2 Units	1,157± s.f.	(BEL-1) 413± s.f.
"C" First Floor "C" Mezzanine "C" Total	1 Unit	2,394± s.f. 1.081± s.f. 3,475± s.f.	(C-1) 174± s.f. (C-2) 55± s.f. (C-3) 292± s.f. Total 521± s.f.

UNIT TYPE	UNITS	UNIT AREA	LANAI
C" Extended First Floor Mezzanine C Extended Total	1 Unit	2,448± s.f. 1,081± s.f. 3,529± s.f.	(CE-1) 260± s.f. (CE-2) 55± s.f. (CE-3) 292± s.f. Total 607± s.f.
'D" First Floor "D" Mezzanine 'D" Total	2 Units	2,000± s.f. 1.037± s.f. 3,037± s.f.	(D-1) 292± s.f. (D-2) 292± s.f. 584± s.f.
"E" First Floor <u>"E" Mezzanine</u> "E" Total	3 Units	987± s.f. <u>535±</u> s.f. 1,522± s.f.	(E-1) 292± s.f. 0 s.f. 292± s.f.
"F" First Floor "F" Mezzanine "F" Total	2 Units	1,207± s.f. 697± s.f. 1,904± s.f.	(F-1) 292± s.f. (F-2) 148± s.f. 440± s.f.
TOTAL RESIDENTIAL	138 UNITS		

13. RESIDENTIAL UNITS - ROOMS: The residential units basically contains:

- a. TYPE "A" UNIT This unit has a living area of 1,426 \pm s.f. (excluding lanais), three (3) bedrooms, a living room, dressing room, kitchen, two (2) bathrooms, and two (2) lanais. One lanai, A–1, has 142 \pm s.f., and the other, A–2, has 55 \pm s.f.
- b. TYPE "A" EXTENDED UNIT- This unit has a living area of 1,515 \pm s.f. (excluding lanais), three (3) bedrooms, a living room, dressing room, kitchen, two (2) bathrooms, and two (2) lanais. One lanai, AE-1, has 189 \pm s.f., and the other, AE-2, has 55 \pm s.f.
- c. TYPE "A" EXTENDED LANAI UNIT living area of 1,426 \pm s.f. One lanai, AEL-1, has 142 \pm s.f., and the other, AEL-2, has 184 \pm s.f.
- TYPE "B" UNIT This unit has a living area of 1,157± s.f. The basic type "B" unit contains three (3) bedrooms, a dining room, living room, kitchen, two (2) bathrooms and a lanai, B-1, of 122± s.f.; however, for the purpose of meeting the individual buyer's desires or needs in the floor plan of this type "B" unit, Developer reserves the right to modify or alter the floor plan of all type "B" units without modifying or altering the perimeter or common element walls. Further, the Developer reserves the right to sell type "B" units as a "shell", that is without any partition walls or finish work, or with any portions thereof, to be completed or finished later by the ultimate buyer or the Developer. If the Developer, or through its contractor, shall finish or complete the unit for the buyer at a later date, then the approval of the floor plans, drawings, specifications etc. by the Association shall not be required and upon completion thereof, a copy of the floor plans, etc shall be submitted to the Association for its files and records. However, if the buyer is to finish or complete the unit then prior to any work therein the buyer shall submit plans, drawings, and specifications to the Association for its approval. The Association shall not unreasonably withhold approval of the buyer's plans, etc. and such buyer shall see that the improvements and construction work do not damage the perimeter or common element walls, that such comply with this Declaration and all condominium documents, and that such meet all building codes and requirements.
- e. TYPE "B" EXTENDED LANAI UNIT This unit is the same as the basic type "B" unit, except for the lanai, which is larger for the type "B" EXTENDED LANAI unit. This type "B" EXTENDED LANAI unit has a living area of 1,157± s.f.,

contains three (3) bedrooms, a dining room, living room, kitchen, two (2) bathrooms and a with a lanai, BEL-1, of $413\pm$ s.f. The floor plan for this type "B" EXTENDED LANAI unit is fixed and not subject to change as may be typical of the type "B" unit as described above.

- f. TYPE "C" UNIT This is a penthouse unit with two (floors). The first floor of this unit has a living area of $2.394\pm$ s.f., excluding the lanais. This unit has a mezzanine with $1.081\pm$ s.f. and the unit contains a kitchen, five (5) bedrooms (two on the first floor and two plus a guest room on the mezzanine), a family room, living room, dining room, four bathrooms (two on each floor), and a laundry room. The total living area, excluding the lanais, is $3.475\pm$ s.f. There are three (3) lanais: C-1 has $174\pm$ s.f., C-2 has $55\pm$ s.f., and C-3 has $292\pm$ s.f.
- g. TYPE "C" EXTENDED UNIT The first floor of this unit has a living area of 2,448 \pm s.f., and the mezzanine has 1,081 \pm s.f. The total living area, excluding the lanai, is 3,529 \pm s.f. This unit has three lanais: CE-1 has 260 \pm s.f., CE-2 has 55 \pm s.f., and CE-3 has 292 \pm s.f.
- h. TYPE "D" UNIT This unit contains two floors. The first floor has a living $2,000\pm s.f.$, excluding the lanais, and the mezzanine has $1,037\pm s.f.$ The total living area, excluding the lanais, is $3,037\pm s.f.$ There are two (2) lanais, one, D-1, has $292\pm s.f.$, and the other has $292\pm s.f.$ This unit has a living room, dining room, kitchen, laundry, four (4) bedrooms (one on the first floor and three on the mezzanine), and three bathrooms (one on the first floor and two on the mezzanine).
- i. TYPE "E" UNIT This unit has two (2) floors. The first floor has a living area of $987\pm$ s.f., excluding the lanai, and the mezzanine has $535\pm$ s.f. It has one (1) lanai, E-1, of $292\pm$ s.f. The total living area, excluding the lanai, is $1,522\pm$ s.f. This unit has a living room, dining room, kitchen, laundry, three (3) bedrooms (two on the first floor and one on the mezzanine), and two bathrooms (one on each floor).
- j. TYPE "F" UNIT This unit has two (2) floors. The first floor has a living area of 1,207 \pm s.f., excluding the lanais, and the mezzanine has 697 \pm s.f. This unit has two (2) lanais, one, F-1, has 292 \pm s.f., and the other, F-2, has 148 \pm s.f. The total living area, excluding the lanais, is 1,904 \pm s.f.
- 14. UNITS CONTENTS: In general, the condominium units shall contain the following:
- a. Each residential unit shall have a built-in microwave oven, washer/dryer, dishwasher, refrigerator, stove, and garbage disposal. Each unit shall have a separate sub-meter for power. Each residential unit shall have an audio/video access control system arrangements for security purposes.
- b. All units shall also have pipes, risers, lines, circuitry and ducts which provide water, etc. to more than one unit. All pipes, risers, lines, circuitry and ducts which serve more than one unit shall be a part of the common elements are depicted on the drawings as filed with the Department of Public Works and various agencies of the government.
- c. Various areas of each unit shall have dropped ceilings to contain the air-conditioning duct work. The air-conditioning duct work and dropped ceiling shall be the exclusive property of the unit owner.
- 15. RESIDENTIAL UNIT DESIGNATIONS: The residential units on each floor shall be designated as set forth below and shall be located on the particular floor according to the referenced exhibits:

Second Floor (12 units): Units 200 to 211; exhibit sheet A2.12

Third Floor (13 units): Units 300 to 312; exhibit sheet A2.14

Fourth Floor (13 units): Units 400 to 412; exhibit sheet A2.14

Fifth Floor (13 units): Units 500 to 512; exhibit sheet A2.14

Sixth Floor (13 units): Units 600 to 612; exhibit sheet A2.14

Seventh Floor (13 units): Units 700 to 712; exhibit sheet A2.14

Eighth Floor (13 units): Units 800 to 812; exhibit sheet A2.14

Ninth Floor (13 units): Units 900 to 912; exhibit sheet A2.14

Tenth Floor (13 units): Units 1000 to 1012; exhibit sheet A2.14

Eleventh Floor (13 units): Units 1100 to 1112; exhibit sheet A2.14

Twelfth Floor (9 units): Units 1200 to 1208; exhibit sheet A2.15

16. UNITS - COMMERCIAL SIZE AREAS: The number and type of commercial units are:

Commercial Unit #1 Plaza Level 5,489± s.f. (includes rest rooms)

Storage Area 244± s.f. total 5,733± s.f.

Commercial Unit #2 Lower Level 2,675± s.f.

Plaza Level 1.214± s.f. total 3,889± s.f.

Commercial Unit #3 Plaza Level 632± s.f.

17. UNITS - COMMERCIAL: There shall be three (3) commercial condominium units, two (2) on the first floor or plaza level of the said 12 story building, and the other in a one (1) story connected or attached building on the beach side of the said property. The commercial units are as follows:

a. COMMERCIAL UNIT #1 -

i. This commercial unit #1 is depicted on a copy of the drawings attached to the Declaration as submitted to the Territorial Land Use Commission as exhibit sheet A2.10, and is located on the first floor or plaza level within the 12 story building. Commercial unit #1 contains 5,733± s.f. (including rest rooms). Commercial unit #1 shall also include the 244± s.f. storage area as shown on the drawings and the use of this space shall be restricted as set forth below. Water and power to commercial unit #1 shall be separately metered. The rest rooms although a part of commercial unit #1, shall be kept open for use by customers and guests of the owner of commercial unit #1 and for the owners of the residential units and their guests during hours by which the owner of the commercial unit #1 shall be open for business. The commercial unit #1 owner shall be responsible for all repairs and maintenance of the rest rooms. Commercial unit #1 shall have the exclusive use of certain limited common areas as depicted on exhibit sheets A2.10 and A2.12 attached to the Declaration as submitted to the Territorial Land Use Commission. These limited common areas for commercial unit

#1 are designated on the drawings as L.C.A. NO. 1-1 through 1-7 and shall be for the exclusive use by commercial unit #1, unless specifically provided to the contrary in this Declaration.

- ii. The storage area of 244± s.f. as shown on the drawings snall exclusively belong to commercial unit #1 and is not part of the common area. This use is restricted and shall only be used for storage of equipment or property of commercial unit #1. The owner of commercial unit #1 may fence the area for security purposes and may build or install shelves therein without Board approval provided all proper building permits are obtained, and such work shall meet all building code requirements, shall not damage or endanger the structural integrity of the walls or foundation, and provided that the drawings of such fencing and shelves are submitted to the Board at least ten (10) days prior to the construction thereof. The Board shall have the right to stop such construction or installation of the fence and shelves at any time if such construction or installation damages or endangers the structural integrity of the walls or foundation. Maintenance costs of this area shall be at commercial unit #1's expense. Cost of repairs for any damage to the structural walls as a result of commercial unit #1's use shall be paid by owner of commercial unit #1. All damage to the structural walls or common elements not caused by commercial unit #1's use such shall be a common area expense.
- b. COMMERCIAL UNIT #2 Commercial unit #2 is in a connected building located on the beach side of said property. It contains a lower level with a unit area of $2.675\pm s.f.$, and a ground floor or Plaza level containing a unit area of $1.214\pm s.f.$ This commercial unit #2 as depicted on exhibit sheets A2.8 and A2.10 attached to the Declaration as submitted to the Territorial Land Use Commission. Water and power is separately metered. Commercial unit #2 shall have the exclusive use of certain limited common areas as depicted on exhibit sheets A2.8 and A2.10 attached to the Declaration as submitted to the Territorial Land Use Commission. These limited common areas for commercial unit #2 are designated on the drawings as L.C.A. NO. 2–1 through 2–4 and shall be for the exclusive use by commercial unit #2, unless specifically provided to the contrary in this Declaration.
- c. COMMERCIAL UNIT #3 This commercial unit #3 is located on the first floor or plaza level within the 12 story building and is depicted on the copy of the drawings attached to the Declaration as submitted to the Territorial Land Use Commission as exhibit sheet A2.10. Commercial unit #3 contains 632± s.f. Water and power to commercial unit #3 shall be separately metered. Commercial unit #3 shall have the exclusive use of certain limited common areas as depicted on exhibit sheet A2.10 attached to the Declaration as submitted to the Territorial Land Use Commission. These limited common areas for commercial unit #3 are designated on the drawings as L.C.A. NO. 3–1 and 3–2 and shall be for the exclusive use by commercial unit #3, unless specifically provided to the contrary in this Declaration.

18. FLOOR LAYOUT - 12 STORY BUILDING:

- a. LOWER LEVEL The lower level of the 12 story building, see exhibit sheet A2.8, shall contain mechanical and electrical rooms, elevator lobbies, storage areas and rooms, and parking.
- b. PLAZA OR GROUND LEVEL The plaza or ground level, shall contain commercial unit #1 and commercial unit #3, rest rooms, lobby, elevator lobbies, security room, mail room, electrical and equipment rooms, parking stalls, etc. as depicted on exhibit sheet A2.10.
- c. 'SECOND FLOOR The second floor shall contain one (1) type A Extended Lanai unit, one (1) type A Extended unit, two (2) type B Extended Lanai units, eight (8) type B units, electrical equipment rooms, storage rooms and bathrooms. This level connects to a pool, recreation decks, gazebos, a jacuzzi, and elevator lobbies as depicted on exhibit sheet A2.12.

- d. THIRD TO ELEVENTH FLOORS For the third to eleventh floors, each shall contain one (1) type A unit, one (1) type A Extended unit, and eleven (11) type B units. Each floor shall also contain elevator lobbies, equipment and electrical rooms. See exhibit sheet A2.14.
- e. TWELFTH FLOOR This floor shall contain one (1) type C unit, one (1) type C Extended unit, two (2) type D unit, three (3) type E units, and two (2) type F units. Also, this floor shall contain elevator lobbies, equipment and electrical rooms. See exhibit sheet A2.15.
- 19. COMMERCIAL UNIT DESIGNATIONS: The commercial units within the 12 story building, on the ground or plaza level are commercial units #1 and #3, and the commercial unit within the outside connected building is commercial unit #2.

20. AIR-CONDITIONING:

- a. Residential units types A, A Extended and A Extended Lanai on the second floor to the eleventh floor shall be cooled by central air-conditioning units with condensers located on the mechanical platforms, adjacent to stairway no. 2, as depicted on the drawings.
- b. All other residential units on the third to the eleventh floors shall be cooled by central air-conditioning units with condensers located in the air conditioning closets within the units.
- c. Residential units on the twelfth floor shall be cooled by central airconditioning units with condensers located on the exterior mechanical spaces.
- d. Commercial unit #1 shall have a separate cooling system located within its premises with condensers on the exterior mechanical spaces designated as L.C.A. NOS. 1-4 & 1-5 on the drawings.
- e. Commercial unit #2 shall have a separate cooling system located within its premises with condensers on the exterior mechanical spaces designated as LC.A. NO. 2-4.
- f. Commercial unit #3 shall have a separate cooling system located within its premises with condensers on the exterior mechanical spaces designated as L.C.A. NO. 3-1.
- g. All air-conditioning equipment, lines, pipes and ducts located in the common areas but <u>serving only one unit</u> (up to and including the point of connection to lines, pipes, risers and ducts serving more than one unit) shall not be a common element but shall be a fixture or property belonging to the particular unit or unit owner and such shall be maintained, replaced or repaired at the expense of the particular unit owner.

21. LIMITS OF UNITS:

- a. Each unit is basically the air space within the perimeter concrete structure walls. Each unit shall <u>not</u> include the perimeter concrete structure walls or interior load-bearing walls, columns, vertical supports, horizontal supports, the floors and concrete ceilings surrounding each unit. Each unit shall <u>not</u> include any pipes, risers, wires, conduits or other utility lines running through the concrete walls and floors, and the pipe chase or central chute and lines or pipes in such unit which are utilized for or serve more than one unit, the same being deemed common elements. All lanais shall be limited common elements.
- b. Each unit shall be deemed to include: all the walls and partitions within the unit which are <u>not</u> load-bearing within its perimeter walls; the inner decorated

and/or <u>finished surfaces</u>, <u>and/or surface coverings</u> of all perimeter concrete structure walls, floors and ceilings, including but not limited to the painted surfaces, wall paper, gypsum boards and other coverings on the perimeter concrete structure walls, floors and ceilings; the dropped ceiling and fan coils and duct work located therein; and any other pipes, lines or ducts serving that particular unit only.

- c. Each unit shall have an audio/video access control system for the main lobby entrance on the ground floor. The audio/video access control system as located within the unit shall belong to the owner of the unit and shall be maintained and fixed at the owner's cost.
- d. Each unit shall have its own air conditioning equipment. The air conditioning equipment as located on the mechanical areas on the second floor shall belong to the particular unit that it serves on the second floor and the air conditioning equipment on the lanais on all other residential units shall belong to the residential unit that it serves.
- 22. PARKING: There shall be a total of 253 parking spaces for the entire Project: Each residential unit shall have at least one (1) assigned parking space for a total of 168 residential spaces. Each residential parking space shall be designated with a number corresponding to the residential unit's number. Commercial unit #1 shall have 32 assigned spaces (designated as CU #1 on the plans), commercial unit #2 shall have 11 assigned spaces (designated as CU #2 on the plans), and commercial unit #3 shall have 5 assigned spaces (designated as CU #3 on the plans. Three (3) spaces shall be designated "H/C" for the handicapped. Eighteen (18) spaces shall be designated as "C/R", COMMERCIAL/RESIDENTIAL, which shall be for the split use or shared by the commercial and residential units (including guests). Finally, there are sixteen (16) "to be assigned", hereafter referred to as "TBA" parking, which are shown on the plans as "TBA to TBA 16. See exhibit sheets A2.1, A2.2 and A2.3 for the assigned and TBA parking spaces to the individual units.
- TBA PARKING: TBA parking (to be assigned parking), shall mean and refer to parking spaces which shall be assigned to a unit (residential and/or commercial) by Developer at a later date. TBA parking shall be part of the limited common area or elements. Developer shall have the right to sell or assign such TBA parking for compensation which shall be kept by Developer. Upon each assignment, Developer shall record a notice of assignment with the Department of Land Management, with a copy to the Association. Once assigned to a particular unit, such parking shall become a part of the limited common element or area for the particular unit. No amendment of this Declaration shall be necessary or required as a result of a sale or assignment of a TBA parking space. Developer's right to sell or assign such TBA parking shall be valid for only a period of three (3) years after the issuance of the final public report for the horizontal property regime for this project. After the said three (3) year period, all unassigned TBA parking spaces shall then become unassigned parking to be a part of the general common area or elements, to be used on a first come, first serve basis. Developer shall then transfer all unassigned TBA parking spaces to the Association by a notice of assignment, to be recorded with the Department of Land Management with a copy to the
- 24. COMMON ELEMENTS: The common elements shall include all portions of the land and improvements other than the units and specifically shall include, but shall not be limited to:
- a. all foundations, floor slabs, columns, girders, beams, supports, bearing walls and lines or pipes as located in such bearing walls, perimeter walls and fences, roofs, corridors, lobbies, entry halls, stairs located outside of the units, walkways outside of the units, and entrances and exits outside of the units for said buildings;

- b. all lower levels, parking levels or floors, pool decks, halls, walkways, elevators, elevator shafts and lobbies, and mechanical, electrical and storage rooms (except the storage lockers which shall be limited common elements). The generator providing emergency power and serving the units in a limited capacity shall be a common element;
- c. all areas and rooms on the ground or plaza level in the 12 story building, excluding any commercial unit;
- d. the audio/video access control system located in the common area on the ground floor and the lines and associated circuitry within the common elements;
- e. all yards, grounds, landscaping, fencing or walls in the yards or surrounding the property, refuse grounds and facilities, walkways and appurtenant facilities; all driveways and non-assigned parking areas and all parking stalls for guest parking;
- f. all sewer lines, electrical equipment, wiring and other central and appurtenant installations for services for the benefit of all units and all the pipes, risers, lines, circuitry and ducts which serve more than one unit;
- g. the swimming pool, sun deck, outside showers and surrounding facilities; all roof areas and all stairways outside of the units, and elevators;
- h. the cost of maintenance of the government park, which is adjacent to the ALUPANG BEACH TOWER and is on Lot No. 2015–1REM NEW–R2, if and only if the obligation of maintenance of such park is acquired by the Board of Directors with the approval of 75% of the unit owners. This obligation of maintenance of such park may be acquired through a "adopt a park program" as may be offered by the government or through any other lawful means or method; and
 - the limited common elements described below.
- 25. LIMITED COMMON ELEMENTS: Certain parts of the common elements, herein called and designated "limited common elements," are hereby set aside and reserved for the exclusive use of certain units, and such units shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside and reserved are as follows:
 - a. the assigned automobile parking spaces as designated for a unit;
- b. the storage rooms and lockers as located in the lower level of the 12 story building are assigned for the particular unit owner's use. The lockers are assigned to the particular units as set forth in exhibit sheet A2.1;
- c. each entryway adjoining a unit shall be appurtenant to and for the exclusive use of such unit which it adjoins; all lanais and any metal railings attached thereto;
- d. all audio/video access control systems located outside of the units but serves only one (1) unit;
- e. limited common elements for commercial unit #1 are designated on the drawings (see exhibit sheets A2.10 and A2.12) as L.C.A. NOS. 1-1 to 1-7:
 - L.C.A. NO. 1-1 exterior area of 423± s.f. on the boardwalk at grid lines A-9 for use reasonably related to business of commercial unit #1; provided, however, this area shall not be enclosed and unit owners, and their guests, shall be allowed

to freely pass through, or sit in this area. Further restrictions concerning the use of this limited common element is set forth below under the section entitled "EASEMENTS".

- ii. L.C.A. NO. 1-2 non-exclusive use of the roof area, having an area of 126± s.f., on commercial unit # 2, to be used for storage of a 500 gallon LPG tank and/or other similar or related use, with reasonable access thereto.
- iii. L.C.A. NO. 1-3 non-exclusive use of the entire underside of the plaza level structural floor system for commercial unit #1's use for pipes and distribution systems; for more detailed terms of this use, see the paragraph or section on "EASEMENTS" below in this Declaration.
- iv. L.C.A. NO, 1-4 area of 122± s.f. for condensing units CU-322, CU-323, CU-324, CU-325, CU-326 and CU-327.
- v. L.C.A. NO. 1-5 area of 60± s.f. for condensing units CU-328 and CU-329 serving commercial unit no. 1.
- L.C.A. NO. 1-6 a non-exclusive easement through that Vi. portion of the perimeter wall of commercial unit #1 that is located above the breezeway and on the roof top of the breezeway (the breezeway is located at the Plaza level between commercial unit #1 and commercial unit #2). This non-exclusive easement may be used by the owner of commercial unit #1 to locate and place, on or through said perimeter wall or on said roof top, exhaust lines or ducts, or lines, ducts and other related equipment for exhaust air. Provided, however, prior to the installation of such lines, ducts and related equipment, the owner of commercial unit #1, or its designee, shall submit drawings, designs and specifications for the same to the Board for approval. The Board shall approve the same unless the Board shall be able to establish that such shall endanger the structural integrity of the wall, roof or ceiling, or that such shall unreasonably interfere with the use and operation of the common areas for the benefit of the entire condominium project. The owner of commercial unit #1 shall cause such lines, ducts and related equipment to "blend in" to the surroundings or to not be unsightly whenever possible, and shall comply with all building codes and regulations. The cost of installation, maintenance, repairs and replacement of such lines, ducts and related equipment, which benefit only commercial unit #1, shall be paid by commercial unit #1.
- vii. L.C.A. NO. 1–7 a non-exclusive easement through that portion of the perimeter wall of the service staging area and a portion of the ceiling space in the service staging area. The owner of commercial unit #1 may use this non-exclusive easement to locate and place, on or through said perimeter wall or on said ceiling space, make-up air fans, ducts, lines and other related equipment for a make-up air system. Provided, however, prior to the installation of such lines, ducts and related equipment, the owner of commercial unit #1, or its designee, shall submit drawings, designs and specifications for the same to the Board for approval. The Board shall approve the same unless the Board shall be able to establish

that such shall endanger the structural integrity of the wall, roof or ceiling, or that such shall unreasonably interfere with the use and operation of the common areas for the benefit of the entire condominium project. The owner of commercial unit #1 shall cause such lines, ducts and related equipment to "blend in" to the surroundings or to not be unsightly whenever possible, and shall comply with all building codes and regulations. The cost of installation, maintenance, repairs and replacement of such lines, ducts and related equipment, which benefit only commercial unit #1, shall be paid by commercial unit #1.

- the owner of commercial unit #1 shall keep the easement viii. areas set forth above in a clean and orderly condition at its expense, except for L.C.A. NO. 1-3 which shall be cleaned by the Association, but the owner of commercial unit #1 shall keep it clean and clear of its own debris. Provided, however, prior to the installation of such lines, ducts and related equipment, the owner of commercial unit #1, or its designee, shall submit drawings, designs and specifications for the same to the Board for approval. The Board shall approve the same unless the Board shall be able to establish that such shall endanger the structural integrity of the wall, roof or ceiling, or that such shall unreasonably interfere with the use and operation of the common areas for the benefit of the entire condominium project. The owner of commercial unit #1 shall cause such lines, ducts and related equipment to "blend in" to the surroundings or to not be unsightly whenever possible, and shall comply with all building codes and regulations. The cost of installation, maintenance, repairs and replacement of such lines, ducts and related equipment, which benefit only commercial unit #1, shall be paid by commercial unit #1.
- f. limited common elements for commercial unit #2 are designated on the drawings (see exhibit sheets A2.8, A2.10 and 2.12) as L.C.A. NOS. 2-1 to 2-4:
 - i. L.C.A. NO. 2-1 balcony area (outdoor deck) of 1,347± s.f., for use reasonably related to the business of commercial unit #2; provided, however, this area shall not be enclosed and unit owners, and their guests, shall be allowed to freely pass through, or sit in this area. Further restrictions concerning this limited common element is set forth below under the section entitled "EASEMENTS".
 - ii. L.C.A. NO. 2-2 area of 294± s.f., for gasoline storage tank, below grade.
 - iii. L.C.A. NO. 2-3 ramp to the lower level for access purposes.
 - iv. L.C.A. NO. 2-4 area of $50\pm$ s.f., for condensing units CU–317 and CU–318, serving commercial unit #2.
 - v. the owner of commercial unit #2 shall keep the easement areas set forth above in a clean and orderly condition at its expense.

- g. limited common elements for commercial unit #3 are designated on the drawings (see exhibit 8 sheet A2.10) as L.C.A. NOS, 3-1 to 3-2;
 - L.C.A. NO. 3-1 area of 30± s.f. for condensing unit serving commercial unit #3.
 - ii. L.C.A. NO. 3-2 non-exclusive use of the entire underside of the plaza level structural floor system for commercial unit #3's use for pipes and distribution systems; for more detailed terms of this use, see the paragraph or section on "EASEMENTS" below in this Declaration.
- 26. THE PARK: The government park adjacent to the ALUPANG BEACH TOWER, as located on Lot No. 2015–1REM NEW-R2 and on any adjoining government land, may be adopted by the Association through an "adopt a park" program or other lawful means. To be adopted, such requires the approval of the proper agencies of the government of Guam, and shall require the majority of the Board of Directors of the Association and the approval of 75% of the unit owners. If and when adopted, then the cost of maintenance of such park may become part of the common area costs which shall be decided by the majority of the Board.
- 27. NON-COMMON ELEMENTS: Certain items within or concerning the units are not common elements, but are the property of the unit owner. The unit owner shall be responsible for and shall maintain, at its expense, the following:
- a. as to items within the unit, the dropped ceiling and air-conditioning fan coil and duct work between the concrete ceiling and the dropped ceiling;
- b. as to items outside of the unit, any air conditioning pipes, lines, wires, ducts, and equipment which exclusively serve one unit shall belong to and shall be the responsibility of the particular unit it serves;
 - any non-load bearing wall within the unit;
- 28. PERCENTAGE OF UNDIVIDED INTEREST: Each unit shall have an undivided interest in the common elements and limited common elements appurtenant to each unit for all purposes, including voting. The undivided interest in the common elements and limited common elements for each unit are as follows:

11111			
UNIT TYPE	OWNERSHIP	NO. OF UNITS	TOTAL
A EXT. L B EXT. L C C EXT. D E F CU #1 CU #2 CU #3	.00761634149 .00809169520 .00761634149 .00617959825 .00617959825 .01856015895 .01884857581 .01622077776 .00812908257 .01016936479 .03062025648 .02077135486	9 10 1 107 2 1 1 2 3 2 1 1	.06854707337 .08091695197 .00761634149 .66121701232 .01235919649 .01856015895 .01884857581 .03244155553 .02438724770 .02033872958 .03062025648 .02077135486
Ì	OTALS:	141 UNITS	1.0000000000

The above represent the decimal approximation of the ownership interests in the common area and are not presented as a percentage (%) interest. An example

of a decimal approximation being converted to a percentage number is as follows: .00761634149 = .761634149%

- 29. EASEMENTS: In addition to any exclusive easements hereby established in the limited common elements, the units and common elements shall also have and be subject to the following easements:
- a. each unit shall have appurtenant thereto non-exclusive easements in the common elements for the purposes support, maintenance and repair of such unit. Each unit shall also have an easement in and to the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided herein. Further, each unit shall have an easement in and through all other units and limited common elements of its building or structure for support, maintenance and repairs;
- b. if any part of the common elements now or hereafter encroaches upon any unit or limited common element, or if any unit now or hereafter encroaches upon any other unit or upon any portion of the common elements, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. In the event any building shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the common elements upon any unit or of any unit upon any other unit or upon any portion of the common elements due to construction shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist;
- c. the Association shall have the right to be exercised by its Board of Directors (hereinafter called "Board") or its designee, to enter such unit and the limited common elements from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein necessary to prevent damage to any unit or common elements;
- d. each unit owner shall have an easement in common with the owners of all other units to use all pipes, risers, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other common elements serving such other units and located in such unit;
- e. the entire property above is subject to any and all easements of record with the Department of Land Management, Government of Guam, particularly that Grant of Easement, instrument no. 328385; Grant of Right of Way, instrument no. 331147; Mortgage, instrument no. 413754; and Mortgage, instrument no. 458497, and its amendment under instrument no. 458498. All the units shall be conveyed free and clear of the said mortgages at the time of closing.
- f. commercial unit #1 shall have an easement to and on certain areas designated on the drawings as L.C.A. NOS. 1-1 to 1-7. Commercial unit #1 shall have the right of ingress, egress and use of said L.C.A. NOS. 1-1 to 1-7 for the following purposes:
 - L.C.A. NO. 1-1 the exterior area of 423± s.f. on the boardwalk at grid lines A-9 for use reasonably related to business of commercial unit #1; provided, however, this area shall not be enclosed and unit owners, and their guests, shall be allowed to freely pass through, or sit in this area. The owner of commercial unit #1 shall not place any equipment, furnishings or objects in this area to impede pedestrian passage. Chairs, benches, tables and trash receptacles shall be allowed. Signs on the boardwalk of reasonable size, as approved by the Board, shall be allowed.

- ii. L.C.A. NO. 1-2 non-exclusive use of the roof area, having an area of 126± s.f., on commercial unit # 2, to be used for storage of a 500 gailon LPG tank and/or other similar or related use, with reasonable access thereto.
- Hi. L.C.A. NO. 1-3 - commercial unit #1 shall have a nonexclusive easement to use the entire underside of the plaza level structural floor system for the placement or location of commercial unit #1's pipes and distribution systems as may be needed for its operations. These pipes and distribution systems shall at all times, when placed or located on the underside of the plaza level structural floor, be at least seven (7) feet above the finished basement floors. Provided. however, prior to the installation of such pipes and distribution systems, the owner of commercial unit #1, or its designee. shall submit drawings, designs and specifications for the same to the Board for approval. The Board shall approve the same unless the Board shall be able to establish that such shall endanger the structural integrity of the walls, floors, foundations, etc., or that such shall unreasonably interfere with the use and operation of the common areas for the benefit of the entire condominium project. The owner of commercial unit #1 shall cause such pipes and distribution systems to "blend in" to the surroundings or to not be unsightly whenever possible, and shall comply with all building codes and regulations. The cost of installation, maintenance, repairs and replacement of such pipes and distribution systems, which benefit only commercial unit #1, shall be paid by commercial unit #1.
- iv. L.C.A. NO. 1-4 area of 122± s.f. for condensing units CU-322, CU-323, CU-324, CU-325, CU-326 and CU-327.
- L.C.A. NO. 1-5 area of 60± s.f. for condensing units CU-328 and CU-329 serving commercial unit no. 1.
- L.C.A. NO. 1-6 a non-exclusive easement through that vi. portion of the perimeter wall of commercial unit #1 that is located above the breezeway and on the roof top of the breezeway (the breezeway is located at the Plaza level between commercial unit #1 and commercial unit #2). This non-exclusive easement may be used by the owner of commercial unit #1 to locate and place, on or through said perimeter wall or on said roof top, exhaust lines or ducts, or lines, ducts and other related equipment for exhaust air. Provided, however, prior to the installation of such lines, ducts and related equipment, the owner of commercial unit #1, or its designee, shall submit drawings, designs and specifications for the same to the Board for approval. The Board shall approve the same unless the Board shall be able to establish that such shall endanger the structural integrity of the wall, roof or ceiling, or that such shall unreasonably interfere with the use and operation of the common areas for the benefit of the entire condominium project. The owner of commercial unit #1 shall cause such lines, ducts and related equipment to "blend in" to the surroundings or to not be unsightly whenever possible, and shall comply with all building codes and regulations. The cost of installation, maintenance, repairs and replacement of such lines, ducts and related equipment,

which benefit only commercial unit #1, shall be paid by commercial unit #1.

- L.C.A. NO. 1-7 a non-exclusive easement through that portion of the perimeter wall of the service staging area and a portion of the ceiling space in the service staging area. The owner of commercial unit #1 may use this non-exclusive easement to locate and place, on or through said perimeter wall or on said ceiling space, make-up air fans, ducts, lines and other related equipment for a make-up air system. Provided, however, prior to the installation of such lines, ducts and related equipment, the owner of commercial unit #1, or its designee, shall submit drawings, designs and specifications for the same to the Board for approval. The Board shall approve the same unless the Board shall be able to establish that such shall endanger the structural integrity of the wall, roof or ceiling, or that such shall unreasonably interfere with the use and operation of the common areas for the benefit of the entire condominium project. The owner of commercial unit #1 shall cause such lines, ducts and related equipment to "blend in" to the surroundings or to not be unsightly whenever possible, and shall comply with all building codes and regulations. The cost of installation, maintenance, repairs and replacement of such lines, ducts and related equipment, which benefit only commercial unit #1, shall be paid by commercial unit #1.
- viii. the owner of commercial unit #1 shall keep the easement areas set forth above in a clean and orderly condition at its expense, except for L.C.A. NO. 1-3 which shall be cleaned by the Association, but the owner of commercial unit #1 shall keep it clean and clear of its own debris. Provided, however, prior to the installation of such lines, ducts and related equipment, the owner of commercial unit #1, or its designee, shall submit drawings, designs and specifications for the same to the Board for approval. The Board shall approve the same unless the Board shall be able to establish that such shall endanger the structural integrity of the wall, roof or ceiling, or that such shall unreasonably interfere with the use and operation of the common areas for the benefit of the entire condominium project. The owner of commercial unit #1 shall cause such lines, ducts and related equipment to "blend in" to the surroundings or to not be unsightly whenever possible, and shall comply with all building codes and regulations. The cost of installation, maintenance, repairs and replacement of such lines, ducts and related equipment, which benefit only commercial unit #1, shall be paid by commercial unit #1
- g. commercial unit #2 shall have an easement to and on certain areas designated on the drawings as L.C.A. NOS. 2–1 to 2–4. Commercial unit #2 shall have the right of ingress, egress and use of said L.C.A. NOS. 2.1 to 2.4 for the following purposes:
 - i. L.C.A. NO. 2-1 balcony area (outdoor deck) of 1,347± s.f., for use reasonably related to the business of commercial unit #2; provided, however, this area shall not be enclosed and unit owners, and their guests, shall be allowed to freely pass through, or sit in this area. The owner of commercial unit #2

shall not place any equipment, furnishings or objects in this area to impede pedestrian passage. Chairs, benches, tables and trash receptacles shall be allowed. Signs on the balcony area are allowed provided such are of reasonable size, as approved by the Board.

- L.C.A. NO. 2-2 area for gasoline storage tank and other equipment reasonably necessary for commercial unit #2's operations.
- iii. L.C.A. NO. 2-3 ramp to the lower level for access purposes.
- iv. L.C.A. NO. 2-4 area of 50± s.f., for condensing units CU-317 and CU-318, serving commercial unit #2.
- h. commercial unit #3 shall have an easement to and on certain areas designated on the drawings as L.C.A. NOS. 3–1 to 3–2. Commercial unit #3 shall have the right of ingress, egress and use of said L.C.A. NOS. 3–1 to 3–2 for the following purposes:
 - i. L.C.A. NO. 3-1 area of 30± s.f., for condensing unit serving commercial unit #3.
 - ii. L.C.A. NO. 3-2 - commercial unit #3 shall have a nonexclusive easement to use the entire underside of the plaza level structural floor system for the placement or location of commercial unit #3's pipes and distribution systems as may be needed for its operations. These pipes and distribution systems shall at all times, when placed or located on the underside of the plaza level structural floor, be at least seven (7) feet above the finished basement floors. Provided. however, prior to the installation of such pipes distribution systems, the owner of commercial unit #3, or its designee, shall submit drawings, designs and specifications for the same to the Board for approval. The Board shall approve the same unless the Board shall be able to establish that such shall endanger the structural integrity of the walls, floors, foundations, etc., or that such shall unreasonably interfere with the use and operation of the common areas for the benefit of the entire condominium project. The owner of commercial unit #3 shall cause such pipes and distribution systems to "blend in" to the surroundings or to not be unsightly whenever possible, and shall comply with all building codes and regulations. The cost of installation, maintenance, repairs and replacement of such pipes and distribution systems, which benefit only commercial unit #3, shall be paid by commercial unit #3.
- i. each commercial unit owner shall have the right to install pipes, ducts and distribution systems through the common element walls or roofs of its particular commercial unit; provided that such pipes, ducts and distribution systems are reasonable in number, are necessary for its operation, are in compliance with all building codes and regulations, does not endanger the structure of the building or walls, shall not unreasonably interfere with the use and operation of the common areas for the benefit of the entire condominium project, shall not create a nuisance, and such shall not cause a material detraction from the attractiveness of the condominium project. Prior to the installation of such pipes, etc. the commercial unit owner shall first obtain the approval of the Association and the Association shall not unreasonably withhold such approval.

The owner of particular commercial unit benefiting from the use of such easement shall pay for all costs relating thereto, including but not limited to repairs, maintenance, replacement, etc,

- j. if the particular use by a commercial unit causes an increase in the insurance policies covering the common areas or common elements, then applicable commercial unit owner shall be liable for such increase in the insurance cost.
- 30. ALTERATION AND TRANSFER OF INTERESTS: The common element interest and easements appurtenant to each unit shall have a permanent character and shall not be altered without the consent of all of the unit owners affected, expressed in an amendment to this Declaration, and duly recorded with the Department of Land Management, Government of Guam. The common element interest and easements shall not be separated from the unit to which they appertain and shall be deemed to be conveyed, leased or encumbered with such unit even though such interest or easements are not expressly mentioned or described in the conveyance or other instrument.

31. USE:

- a. All residential units shall be used for residential purposes and may be leased, rented and subletted for any term or period, and may be leased, rented or subletted for hotel purposes and time-share purposes. All commercial units may be used by the owner for any commercial, hotel, time- share or business use allowed by law.
- b. The common elements and limited common elements shall be used for the purposes set forth in this Declaration, and for any other purpose which may best serve the needs of the Association. The Association may lease out portions of the common elements, or change the use of such common elements, provided 75% the unit owners, based on their common interest, approve such lease or change of use.
- c. The owner of a unit shall not use the unit and common elements for any purposes which will injure the reputation of the building. Such owner shall not suffer anything to be done or kept in said unit or elsewhere which will jeopardize the soundness of the buildings, or which will interfere with or unreasonably disturb the rights of other owners, or which will obstruct the stairways of the building, or which will increase the rate of fire insurance on the building or the contents thereof or which will reduce the value of the building.

32. RENOVATION & REMODELING:

- a. Residential Units The owner of a residential unit shall not, without the prior written consent of the Board, make any structural alterations in or additions to the unit or make any alterations in or additions to the exterior of the unit or to any other portion or portions of the common elements and limited common elements including any pipes or lines within a unit and connecting with lines within the pipe chases or central chutes, unless otherwise provided by this Declaration, By–Laws or rules and regulations. The owner of a residential unit may, however, renovate or remodel the interior of his or her residential unit provided such renovation or remodeling first receives the approval of the Board, and such renovation or remodeling shall only be to the surfaces of the walls, floors and/or ceiling, or to non–load bearing walls, or which shall not affect the common areas in any material or detrimental way whatsoever. The Board shall have the right to request copies of drawings and specifications to be submitted to the Board in order for it to make a decision on the matter.
- b. Commercial Units The owners of the commercial units shall have the right to remodel, renovate and alter the interior of the commercial units without Board approval, provided, that such remodelling, renovation and alteration concerns and affects only the interior of the unit and the surfaces of the load bearing walls, floors, and other common elements. Examples of such permitted remodelling, etc. without Board approval

are painting, walloapering, re-carpeting, floor tiles, removal and replacement of non-load bearing partitions, etc. Provided, however, such remodelling may be performed without the approval of the Board only if the Board receives notice of such intended remodelling at least sixty (60) days prior to the start of such work and such notice is accompanied by drawings and specifications, and simultaneously the owner submits a statement certified by an architect, licensed on Guam, that such remodelling, etc. shall not detrimentally affect any load bearing walls or cause any structural damage. The purpose of such notice is to give the Board an opportunity to review the drawings, etc. to see that the load bearing walls and the common elements and structures are not affected by the remodelling, and that the particular owner shall comply with the terms and conditions of this Declaration. If the Board fails to notify the commercial unit owner of any objections within 60 days after the date the Board has received the request for approval and all related drawings, specifications and documents, then it shall be deemed that the Board has no objection and the commercial unit owner may proceed with such remodelling and renovation. The owner of the particular commercial unit shall not commence work if the Board has any reasonable objection. The Board shall have the right to stop any remodeling or renovation work if the Board determines, at any time, that the load bearing walls shall be affected or that the particular owner is or shall violate the terms and conditions of this Declaration. Except as specifically provided above and in the condominium documents for this Project, all other remodelling, renovation and alteration shall first require the approval of the Board.

- 33. ADMINISTRATION OF PROJECT: Administration of the Project shall be vested in the ALUPANG BEACH TOWER Owners Association, also referred to in this Declaration as the "Association", consisting of all unit owners of the Project in accordance with the By-Laws of the Association which shall be filed with the Department of Land Management, Government of Guam as a separate instrument and made a part of the documents. The Association shall operate by or through its Board of Directors as established by the By-Laws. These By-Laws are hereby incorporated herein by reference. Operation of the Project and maintenance, repair, replacement and restoration of the common elements, and any additions and alterations thereto, shall be in accordance with the provisions of said Horizontal Property Act, this Declaration and the By-Laws, and specifically but without limitation the Association shall:
- a. make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained, and repaired upon or adjoining or in connection with or for the use of the Project or any part thereof:
- b. keep all common elements of the Project in a strictly clean and sanitary condition, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Project or the use thereof:
- c. repair, maintain, amend and keep all common elements of the Project, including without limitation the buildings thereof, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided herein, and maintain and keep said land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass thereon in good cultivation and replant the same as may be necessary, and repair and make good all defects in the common elements of the Project herein required to be repaired by the Association, of which notice shall be given by any owner or his agent, within thirty (30) days after the giving of such notice;
- d. before commencing or permitting construction of any improvement on the Project, obtain and deposit with the Association a performance and material and payment bond or certificate thereof naming as obligees the Association and any other unit owners as their interests may appear, with a corporate surety authorized to do business in Guarn guaranteeing completion of such construction free and clear of all mechanic and materialmen's liens:

- e. observe any setback lines affecting the Project as may be depicted on said condominium drawings, and not erect, place or maintain any building or structure whatsoever except approved fences or wall between any street boundary of the Project and the setback line along such boundary;
- f. have the right, to be exercised by its Board or its designee, to enter any units and limited common elements from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein required to prevent damage to any units or common elements or for the installation, repair or replacement of any common elements;
- g. not erect or place on the Project any building or structure including fences and walls, nor make additions or structural alterations to or exterior changes of any common elements of the Project except in accordance with condominium drawings and specifications including detailed plot plan, prepared by a licensed architect if approved by the Association and by a majority of unit owners (or such larger percentage as required by law or this Declaration) including all owner of units thereby directly affected, (as determined by the Board) and complete any such improvements diligently after the commencement thereof;
- h. not make or suffer any strip or waste or unlawful, improper or offensive use of the Project;
- 34. MANAGING AGENT: The Association, via its Board of Directors, shall appoint a responsible managing agent to manage the Project. Any managing agent, when appointed, shall be one of the proper persons to serve and receive any legal process or notice being served upon the Association.
- 35. SERVICE OF PROCESS: For the first one (1) year period after the issuance of the Final Public Report for the horizontal public regime of the project by the proper governmental authority the following person shall be the proper person to receive service of process for and on behalf of the Association, unless such person is replaced by the Board as set forth below:

Henry M. Simpson, Jr. 997 South Marine Drive Tamuning, Guam 96931

Provided, however, at the first meeting of the Board of Directors of the Association, the Board shall elect and nominate another person to replace the person named above. The new person as designated shall then serve as agent to receive service of process or notice for the Association. Such person shall so serve until he is replaced or he resigns as agent for the purpose of service of process. It shall be the duty of the Board of Directors to have a person designated at all times as the agent for the purpose of service of process or notice. If there is no designated agent, or even if there is a designated agent, each member of the Board of Directors, on behalf of the Association is hereby authorized to receive service of legal process as provided in said Horizontal Property Act. The Board of Directors, and each individual member thereof, shall not receive compensation for acting as agent to receive service of legal process.

36. OWNER'S PERSONAL PROPERTY INSURANCE: The Association shall not be liable for any damage caused to any personal property in each unit by earthquake, fire, typhoon, storm or other casualties. Each owner of a unit shall have the obligation to maintain his own insurance on his personal property, furniture, carpets, floor coverings, cabinets and the contents or fixtures in his unit. Such insurance shall cover water damage or other damages from earthquake, fire, typhoon, storm or other casualties not covered by the common element insurance.

- COMMON EXPENSES; All charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration of the Project, including without limitation, the operation thereof, any maintenance, repair, replacement and restoration of the common elements and limited common elements and any additions and alterations thereto, any labor, services, materials, supplies and equipment therefore, any liability whatsoever for loss or damage arising out of or in connection with the common elements or any accident, fire or nuisance thereon, and any premiums for hazard and liability insurance herein required with respect to the Project, shall constitute common expenses of the Project for which all unit owners shall be severally liable in proportion to their respective common interests. The Board shall from time to time assess the common expenses against all the units in their respective proportionate shares, or may charge or levy special assessments or fines as may be allowed by the By-Laws or rules and regulations of the Project, and the unpaid amount of such assessments or fines against any unit shall constitute a lien against such unit which may be foreclosed by the Board or Managing Agent as provided by said Horizontal Property Act, provided that thirty (30) days prior written notice of intention to foreclose shall be mailed, postage prepaid, the unit owner and all other persons having any interest in such unit as depicted in the Department of Land Management, Government of Guam.
- 38. DAMAGES TO COMMON OR LIMITED COMMON ELEMENTS: The Association shall, at its expense, repair, maintain and replace all common element and limited common elements. All common elements and limited common elements shall be insured according to the Declaration and By-Laws as applying to this Project. However, if any common element or limited common element is damaged through the fault, action or inaction, or negligence of a particular unit owner, its agents, tenants, family, guests, servants or invitees, then such cost shall be assessed to or the responsibility of the particular unit owner. The Association shall have the right to repair the same and if the particular unit owner fails to pay the Association the cost of repairs, such shall constitute a lien against the particular owner's unit.
- 39. COMPLIANCE WITH DECLARATION AND BY-LAWS: All unit owners, their tenants, agents, families, servants, guests, and any other persons who may in any manner use the Project, shall be bound by and comply strictly with the provisions of this Declaration, the By-Laws for the Association and all agreements, decisions and determinations of the Association as lawfully made or amended from time to time, and failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board or Managing Agent on behalf of the Association, or, in a proper case, by any aggrieved unit owners.

40. INSURANCE:

The Board on behalf of the Association, at its common expense, shall at all times keep all buildings of the Project insured against loss or damage by fire, typhoon, water, and earthquake, with extended coverage in an insurance company authorized to do business in Guam in an amount not less than 80% of, as near as practicable, the full replacement cost thereof, in the name of the Board as trustee for all unit owners and mortgagees according to the loss or damages to their respective units and appurtenant common interest, and payable in case of loss to such bank or trust company authorized to do business in Guam as the Board shall designate for the custody and disposition as herein provided of all proceeds of such insurance, and from time to time upon receipt thereof cause to be deposited promptly with the trustees true copies of such insurance policies or current certificates thereof, without prejudice to the right of each unit owner to insure his unit for his own benefit. In every case of such loss or damage, all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the original drawings and elevation thereof or such modified drawings conforming to the laws and ordinances then in effect as shall be first

approved as herein provided, and the Association at its common expense shall make up any deficiency in such insurance proceeds. The Association shall assess the unit owners for such deficiency. Whenever possible, every such policy of insurance shall:

- i. provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration or contribution by reason of, any other insurance obtained by or for any unit owner;
- ii. contain no provision relieving the insurer from liability for loss occurring while the hazard to such buildings is increased, whether or not within the knowledge or control of the Board, or because of any breach or warranty or condition or any other act or neglect by the Board or any unit owner or any other persons under either of them;
- iii. provide that such policy may not be canceled (whether or not requested by the Board) except by the insurer giving at least sixty (60) days prior written notice thereof to the Board, trustees and every other person in interest who shall have requested such notice of the insurer;
- iv. contain a waiver by the insurer of any right of subrogation to any right of the Board, or unit owners against any of them or any other persons under either of them;
 - v. contain a standard mortgagee clause which shall:
- provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any unit or unit lease of the Project, in their respective order and preference, whether or not named therein;
- 2) provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board, fee owner or unit owners or any persons under any of them;
- 3) waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause; and
- 4) provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by the Board.
- b. The Board on behalf of the Association at its common expense shall also effect and maintain at all times comprehensive general liability insurance covering all unit owners with respect to the Project and the Association as additional assureds, in an insurance company authorized to do business in Guam with minimum limits of not less than \$500,000.00 for injury to one person and \$2,000,000.00 (if available on Guam) for injury to more than one person in any one accident or occurrence and \$100,000.00 for property damage. This insurance shall be without prejudice to the right of any unit owners to maintain additional liability insurance for their respective unit.
- 41. CONDEMNATION: In case at any time or times the Project or any part thereof shall be taken or condemned by any authority having the power of eminent domain, or shall be sold to such authority under threat of condemnation, all compensation and damages for or on account of any fee simple interest in the land and improvements on the Project shall be payable to such bank or trust company authorized to do business in Guam as the Board shall designate as trustee for all apartment unit owners and mortgagees according to the loss or damage to their respective units and appurtenant

common interests and shall be used promptly by the Association to the extent necessary for restoring or replacing such improvements on the remaining land according to the condominium drawings on file with the applicable government agencies unless such restoration or replacement is impractical. Unless such restoration or replacement is undertaken within a reasonable time after such condemnation the Association at its common expense shall remove all remains of such improvements so taken or condemned and restore the site thereof to good orderly condition and even grade.

- 42. UNINSURED CASUALTY: In case at any time or times any improvements of the Project shall be substantially damaged or destroyed by any casualty not herein required to be insured against, whether to rebuild, repair, or restore such improvements shall be determined by affirmative vote of seventy-five percent (75%) of the unit owners, based on their common interest in each unit. Any such approved restoration of the common elements shall be completed diligently by the Association as a common expense according to the original drawings and elevation thereof or such drawings first approved, or as amended as provided in this Declaration. Unless such restoration is undertaken within a reasonable time after such casualty, the Association at its common expense shall remove all remains of improvements so damaged or destroyed and restore the site to a good orderly condition and even grade.
- ALTERATION OF PROJECT: Major restoration or replacement on or appurtenant to the Project of any building, or construction or structural alteration or addition to any building, different in any material respect from said condominium drawings of the Project, shall be undertaken by the Association or any unit owner only pursuant to an amendment of this Declaration, duly executed by or pursuant to the affirmative vote of 75% the unit owners, based on their common interest, and accompanied by the written consent of the holders of all liens (if the lienholder require such consent) affecting any of the units, and in accordance with complete drawings and specifications therefore first approved in writing by the Board, and promptly upon completion of such restoration, replacement or construction, the Association shall duly record or file of record such amendment together with a complete set of drawings of the Project as so altered, certified as built by a registered architect or professional engineer; PROVIDED, HOWEVER, that notwithstanding any provision in this Declaration to the contrary, any alterations or additions, by a unit owner, within a unit or within a limited common element appurtenant to and for the exclusive use of such unit and not affecting the common element walls or structure, shall require only the written consent thereto and written approval of the unit owner's drawings by only the holders of all liens affecting such unit (if the lienholder require such consent and approval), the Board, all other unit owners thereby directly affected (as determined by the Board) and such alterations or additions may be undertaken without an amendment to this Declaration or without filing of a complete set of drawings of the Project as so altered.
- A4. MAINTENANCE RESERVE FUND: The Board shall establish and maintain a Maintenance Reserve Fund by the assessment of and payment by all unit owners in equal monthly installments of their respective proportionate shares of such reasonable annual amount as the Board may estimate as adequate to cover each unit owner's obligations to provide for utilities, insurance, maintenance and repair of the common elements and other expenses of administration of the Project, which shall be deemed conclusively to be a common expense of the Project. The Board may include reserves for contingencies in such assessment, and such assessment may from time to time be increased or reduced in the discretion of the Board. The proportionate interest of each unit owner in said Fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such unit even though not expressly mentioned or described in the conveyance thereof. In case the Horizontal Property Regime hereby created shall be terminated or waived, said Funds remaining after full payment of all common expenses of the Association shall be distributed to all unit owners in their respective proportionate shares except for the owners of any units then reconstituted as a new Horizontal Property Regime.

45. INVALIDITY: The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration and in such event all of the other provisions of this Declaration shall continue in full force and effect as if such provision had never been included herein.

46. AMENDMENT:

- a. This Declaration of Horizontal Property Regime may be amended, consistent with the provisions of the statutes of Guam, by an instrument in writing signed and acknowledged by the President or Vice President and Secretary or Treasurer of the Association, and containing a certificate of the signing officers that the amendment was approved by the owners of seventy-five percent (75%) of the unit owners, as determined by using the common interest of each unit at a meeting duly called and held for that purpose. The amendment shall be effective upon recordation in the Department of Land Management, Government of Guam.
- b. The Developer reserves the right, at anytime during the first twelve months after the completion of this condominium project, to add an addendum to this Declaration and to record such addendum only with the signature and acknowledgement of Developer's signature only for the limited purpose of incorporating a verified statement of a registered architect or professional engineer certifying that the drawings and specifications as filed, or being filed simultaneously with such addendum, fully and accurately depict the layout, location, unit numbers and dimensions of the units as built in accordance with the requirements of the statutes of Guam.
- c. Further, as long as the Developer owns all of the units, or in other words, if none of the units have been conveyed to any purchaser, then the Developer in its own name and/or in the name of the Association shall have the sole right to terminate, withdraw, cancel and amend this Declaration, the By-Laws, Rules and Regulations and any other related condominium documents.
- UNPAID COMMON EXPENSES CONSTITUTE LIEN: All sums assessed by the Association for the common expenses, including special assessments or fines, chargeable to any unit shall constitute a lien on such unit prior to all other liens except only (i) liens for taxes and assessments lawfully imposed by the government against such unit, and (ii) all sums secured by mortgages of record. Such lien in favor of the Association for the common expenses may be foreclosed by suit by the Association or Managing Agent, acting on its behalf, in like manner as a mortgagee of real property, provided that the unit owner is given thirty (30) days written notice to pay the amount due and such notice shall be mailed, postage prepaid, to the Lessor, Sublessor, any Mortgagee of interest, any Mortgagee of interest, and all persons having an interest in such unit as depicted in the Department of Land Management, Government of Guam. The Managing Agent, acting on behalf of the Association pursuant to directions of its Board and Sublessor, shall have the power on behalf of the Association to bid at foreclosure sale and to acquire such unit. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The Association shall also have the right to recover attorney's fees and costs, from the particular unit owner, for the collection of the common expenses.
- 48. PERFORMANCE BY INDIVIDUAL UNIT OWNERS: Each unit owner shall perform all terms and conditions, covenants and other requirements under this Declaration of Horizontal Property Regime, the By-Laws, and any other documents pertaining to the Project and if such unit owner fails to perform, the Association may bring an action for the enforcement of such terms, conditions, provisions, etc., and the cost of enforcing the same shall be a lien against the unit. Such expenses shall include and shall not be limited to court costs, attorney's fees and collection fees for the same. Prior to the enforcement of any such term and condition, the Association shall give the unit owner written notice to perform within a certain time as may be provided specifically

herein for any specific breach as may be provided in any particular document concerning the Project and if no such specific time limit is provided then no less than thirty (30) days written notice. In the event of any notice of default is sent to the unit owner, a copy of such notice shall also be delivered to any mortgagee of record in the Department of Land Management, Government of Guam and/or as may be recorded with the Association.

- 49. ACQUISITION BY FORECLOSURE: Where the mortgagee of a mortgage of record or other purchaser of any unit obtains title to such unit as a result of foreclosure of the mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expense or assessments by the Association chargeable to such unit which became due prior to the acquisition of title to such unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners including such acquirer, his successors and assigns.
- 50. DEFINITIONS: The terms "majority" or "majority of unit owners" herein means the owners of units to which are appurtenant more than fifty percent (50%) of the common interests, and any specified percentage of the unit owners means the owners of units to which are appurtenant such percentage of the common interests.
- 51. LAWS OF GUAM: In the event of any conflict between the laws of Guam concerning condominiums or horizontal property regimes, and terms and conditions of this Declaration and any related condominium documents for this project, then the laws of Guam shall prevail.

The purchaser of prospective purchaser should be cognizant of the fact that this published Report represent information disclosed by the Developer in the required Notice of Intention submitted on June 12, 1991.

This FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 092, as filed with the Commission on June 12, 1991.

The Report, when reproduced, shall be a true copy of the Commission's Public Report. In making facsimiles, the paper stock shall be whit in color.

TERRITORIAL LAND USE COMMISSION

Territory of Guam
Planning Section
Department of Land Management
Government of Guam

Executive Secretary

Territorial Land Use Commission

DISTRIBUTION:

DEPARTMENT OF REVENUE & TAXATION DEPARTMENT OF LAND MANAGEMENT DEPARTMENT OF PUBLIC WORKS TITLE GUARANTY OF GUAM, INC.

TERRITORY OF GUAM)
CITY OF AGANA) ss:

On this day of August, 1992, before me a Notary Public in and for the Territory of Guam, personally appeared F. L. G. CASTRO, known to me to be the Executive Secretary of TERRITORIAL LAND USE COMMISSION, Territory of Guam, whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed on behalf of TERRITORIAL LAND USE COMMISSION, Territory of Guam, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date last above written.

JOSE O. TAITAGUE

Notary Public in and for the Territory of Guam.

My commission expires 8/31/93

Final Public Report for Alupang Beach Tower Lot Nos. 2015–1–REM–NEW–2 & 131 REV, UNIT 1, Municipality of Dededo, Territory of Guarn, was prepared by the Territorial Land Use Commission and reviewed by Jose Q. Taitague.

CERTIFICATE AND RECEIPT AND READING OF FINAL REPORT

The undersigned hereby certifies that he has received a copy of the FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT on ALUPANG BEACH TOWER, Registration No. 092, as located in the Municipality of Dededo, Territory of Guam, said Report being issued by the Territorial Land Use Commission on July 9, 1992, and expiring on August 9, 1992; that he has had the opportunity to read and has read said Report prior to the execution of any sales contract and other documents for the purchase of Unit, ALUPANG BEACH TOWER.
Dated this day of, 19, at the hour of o'clock,m.

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***Approval by the Guam Land Use Commission of a Zone change DOES NOT CONSTITUTE FINAL APPROVAL but rather a recommendation to the Governor for his approval. Notification be sent upon action taken by the Governor. [Reference 21 GCA (Real Property), Chapter 61(Zoning Law), Section 61634 (Decision by the Commission).]

NOTICE OF ACTION Hibarl Guam Corp. co-joined by the Cho Group Of the Alupang Beach tower Represented by Ms. Joyce C.H. Tang, Esq. GUC Meeting of October 28, 2004 Page 2 of 3

Application No. N/A

APPLICATION DESCRIPTION: The Applicants, Hibari Guam Corp. co-joined by the Cho Group of the Alupang Beach Tower request approval of a supplemental filing to the original Declaration of Horizontal Property Regime entitled "The Replacement Declaration" of the Horizontal Property Regime of the Alupang Beach Tower, Registration No. 92.
RECOMMENDATIONS: The Guam Land Use Commission Approved the applicant's request for the supplemental filing of a "Replacement Declaration". Penner C. Gulac DATE Acting Chief Planner Department of Land Management
Joseph M. Borja DATE Executive Secretary Guan Land Use Commission Case Planner: Carl Untalan
Attachment(s): ARC Distribution List Cc: Building Permits Section, DPW (Attn: Mr. Jesus Ninete) CERTIFICATION OF UNDERSTANDING
I/We Hibari Guam Corporation / Joyce C.H. Tang, Counsel for Hibari Guam Corporation (Applicant [Please print name]) (Representative [Please print name]) Understand that pursuant to Section 5 of Executive Order 96-26, the applicant must apply for and receive a building or grading permit for the approved GLUC/GSPC project within one (1) year of the date of recordation of this Notice of Action, otherwise, the approval of the project as granted by the Commission shall expire. This requirement shall not apply for application for Zone Change. The Commission may grant two (2) one-year extensions of the above approval period at the time of initial approval.
I/We, further agree and accept the conditions above as a part of the Notice of Action and further agree to any and all conditions made a part of and attached to this Notice of Action as mandated by the approval of the Guam Land Use Commission/Guam Seashore Protection Commission.
Signature of Applicant Signature of Representative Jayre C.H. Tang, counsel for Hibert Guam Corporation DATE: Bruember 18, 2004
ONE (1) COPY OF RECORDED NOTICE OF ACTION RECEIVED BY:
□ Applicant □ Representative

DATE

Attachment: ARC Distribution

NOTICE OF ACTION
Hibarl Guam Corp. co-joined by the Cho Group
Of the Alupang Beach tower
Represented by Ms. Joyce C.H. Tang, Esq.
GLUC Meeting of October 28, 2004
Page 3 of 3

Application No. N/A

Application Review Committee (Re: Gov's Directive, Oct 1996)

DEPARTMENT	Signature of Representative	Date Received
Department of Public Works		
Guam Environmental Agency		
Bureau of Statistics and Plans		
Department of Agriculture		
Guam WaterWorks Authority		
Department of Parks & Recreation		-
Guam Power Authority		
Dept. of Public Health & Social Services (ex-officio)		
Guam Fire Department (ex-officio)		
Department of Education (ex-officio)		
Department of Commerce (ex-officio)		
Department of Chamorro Affairs		

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Department of Land Management Office of The Recorder

File for record is instrument No.

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GUAM LAND USE COMMISSION MEETING OCTOBER 28, 2004, THURSDAY

2:05 p.m. to 3:34 p.m.

Department of Land Management First Floor Conference Room Hagatña, Guam

Joanna A. Lobdell
DLM Recorder/Administrative Secretary II



UUMNI LAIND OUL OC... GUAM SEASHORE PROTECTION COMMISSION

Chairman (Vacant) Vice-Chairman Edwin K.W. Ching, Esq. Commissioner Lisa P. Arricia Commissioner P. Tim Aquon

Commissioner Linda A.S. Flynn Commissioner Vicente D. Gurnataoteo (Unconfirmed) Commissioner Edward A. Guerrero

Joseph M. Borja., Executive Secretary

AGENDA

Department of Land Management Conference Room October 28, 2004, Thursday, 2:00 p.m.

Notation of Attendance: I.

[Quorum

[] No Quorum

Approved ||

Reading and Approval of Minutes: GLUC Regular Meeting of April 27, 2004

Unfinished Business: 111.

Reported by 1. Status of Guam Seashore Reserve Plan Executive Sec.; Legal Counsel to pursue AG Opinion

Zone Variance violation - Danny Leon Guerrero DPW (Joe Guevara); Legal Counsel to pursue status with AG's Office.

Action on Applications:

Approved with ARC conditions and restrictions

Conditional Use Permit: The Applicant, Christian Life Center, Southern Christian Academy c/o Pastor Steven M. McManus, requests a Conditional Use Permit for a proposed church and school facility on Lot 5, Tract 31002, Municipality of Agat, in an "A" (Rural) zone, under Application No. 2004-16. (GLUC Mtg. 9/14/04 - Tabled) DLM Case Planner: Penmer Gulac

Approved with previously imposed ARC conditions and current ARC conditions

Conditional Use Permit Renewal: The Applicant, Hamamoto Gardens, requests renewal of a previously approved Conditional Use Permit to expand a farming business to include a tour operations on the existing farm facilities with sales of fruits, vegetable produce, drinks, food, a gift shop related to the farm product for wholesale or retail and to operate a mini-train for touring the farm on Lot 90-6-1, Municipality of Yona, previously approved with conditions on July 25, 1996 by the GLUC under Application No. 96-020.

Venture, represented by Marcel G. Camacho, requests an amendment to

a previously approved master plan for Ypaopao Estates, Lot R-3, Tract

276-REM, Municipality of Dededo, approved with conditions on June 12,

DLM Case Planner: Frank Taitano

Tentative Subdivision Renewal:

5. Approved with conditions imposed by previous Commission and conditions imposed by this GLUC to include

Approved

1997, by the GLUC under Application No. 96-063. DLM Case Planner: Carl Untalan

recreation area (park) at the end of Phase I and before starting Phase II Tentative Subdivision Renewal: The Applicant, Golden Gate Services, L.L.C., represented by Ignacio F. Santos, request a renewal on a Tentative Subdivision for a residential subdivision with full improvements for Block 16, Tract 1314 (Formerly Lot 2152-R-RNEW-1), Municipality of Tamuning, approved with conditions on May 30, 2000 by the GLUC under Application No. 2000-06.

DLM Case Planner: Marvin Aguilar

(CONTINUED BACK PAGE)

The Applicant, Compadres Family

GLUC/GSPC Regular Meeting October 28, 2004, Thursday Page 2

Approved

7. Horizontal Property Regime: The Applicants, Hibari Guam Corp. joined by the Cho Group, are submitting an application for review and approval of a supplemental filling to the original Declaration of Horizontal Property Regime entitled "The Replacement Declaration of Horizontal Property Regime of the Alupang Beach Tower" (The Replacement HPR) represented by Joyce C.H. Tang, Esq., Registration No. 92. DLM Case Planner: Carl Untalan

V. Administrative Matter(s)

Reported by Executive Sec.: Resolution, Public Law 27-91. Unanimous vote that Legislature vi. Adjournment. 3:34 p.m. repeal this law.

GUAM LAND USE COMMISSION (GLUC) (Regular Meeting Minutes) 2:05 p.m., October 28, 2004 Department of Land Management Conference Room First Floor, Hagatña

- I. Attendance. The following GLUC members were in attendance at this meeting:
- (1) Commissioner/Vice-Chairman Edwin K.W. Ching, Esq.

(4) Commissioner Lisa P. Arriola

(2) Commissioner Vicente D. Gumataotao

(5) Commissioner Linda A.S. Flynn*

(3) Commissioner P. Tim Aguon

(6) Commissioner Edward A. Guerrero

(*Ms. Flynn arrived for Item 5, Compadres Family Venture.)

(<u>Recorder's Note</u>: For the record, Mr. Troutman's advice was sought on Nov. 26, 2004, 9:00 a.m., if Mr. Guerrero 's vote could be counted at this meeting, and he advised that, if there was a problem getting a majority vote with the remaining members (Answer: No, because five other members were present to vote), it would be safer to exclude Mr. Guerrero's vote.) (Note: Mr. Edward Guerrero was confirmed by the 27th Guam Legislature on Nov. 24, 2004.)

Also present were: Mr. Charles H. Troutman, Esq., Legal Counsel

Mr. Joseph M. Borja, Executive Secretary, GLUC Mr. Carlos R. Untalan, DLM Acting Chief Planner Mr. Joseph Guevara, DPW Building Inspector

Ms. Joanna A. Lobdell, Administrative Secretary II/DLM Recorder Pro tem

- II. Reading and Approval of Minutes, April 27, 2004. Ms. Arriola moved to approve the GLUC minutes; affirmed by Mr. Aguon, with all in favor. (Four votes, unanimous)
- III. Unfinished Business
- 1. Staus of Guam Seashore Reserve Plan (GSRP). Mr. Joseph Borja reported that the GSRP Task Force that was organized to pursue the rules and regulations for the Plan had some concerns and had sent a letter to the AG, asking for clarification on three points. The Vice-Chairman asked Mr. Troutman to pursue the opinion from the AG on this matter.
- Zone Variance Violation Danny Leon Guerrero. Mr. Joseph Guevara reported that this
 matter had been forwarded to the AG for prosecution, adding that DPW had issued Mr. Leon
 Guerrero numerous notices of violation. Mr. Troutman will pursue the status with the AG.
- IV. Action on Applications
- 3. CONDITIONAL USE PERMIT, Application 2004-16, Christian Life Center, Southern Christian Academy, c/o Pastor Steven M. McManus, for a proposed church and school facility on Lot 5, Tract 31002, Municipality of Agat, in an "A" (Rural) Zone. DLM Case Planner: Penmer Gulac

Present were Pastor Steven McManus (representing the Applicant) and Mr. David Tan (Provido-Tan Architects). DLM Cast Planner Penmer Gulac reported that this application had been previously tabled at the September 14, 2004 GLUC meeting, pending a position statement from GWA, who had since then submitted one, with no objections. Mr. Joe B. Garrido, GWA Planner and a member of the Application Review Committee, Ms. Sylvia Mercado (from GWA Water Treatment Plant Sewage System), and Mr. Candido Orbong, Jr. (GWA Water Division), were also present. Mr. Garrido stated that all three agreed on the adequacy of the water supply, placing emphasis on the proposed plan for two 10,000-gallon water tanks (one potable and one non-potable) to meet the demand. Queries posed by the GLUC included the future plans for development in that area, the Land for the Landless Subdivision, and scheduled completion date for Phase! (first floor classrooms and cafeteria), etc.

<u>MOTION</u>. Mr. Aguon moved to approve the project, subject to the applicant abiding by the conditions and restrictions imposed by the Application Review Committee (ARC); affirmed by Mr. Gumataotao, with all in favor. (Four votes, unanimous) (Recorder's Note: Ms. Flynn had not yet arrived.)

4. CONDITIONAL USE PERMIT RENEWAL, Application 96-020, Hamamoto Gardens, renewal of a previously approved Conditional Use Permit to expand a farming business to include tour operations on the existing farm facilities with sales of fruits, vegetable produce, drinks, food, a gift shop related to the farm products for wholesale or retail, and to operate a mini-train for touring the farm on Lot 90-6-1, Municipality of Yona, previously approved with conditions on July 25, 1996 under Application 96-020. DLM Cast Planner: Frank Taitano

Acting Chief Planner/Case Planner Carl Untalan reported that the seven-year time frame for this application had lapsed and the applicant was asking that no time limitation be imposed, adding that the applicant was granted a Conditional Use Permit in 1996 and currently had the support of the Yona Mayor's Office and the 27th Guam Legislature. Mr. Richard Rosario (Associate for the Applicant/Consultant, Rosario & Associates, Inc.) explained the project and distributed pictures of the 50-acre lot.

MOTION. Mr. Gumataotao moved to approve the application, as long as the applicant abided by his present use and ARC conditions, and adhered to previously imposed conditions; affirmed by Mr. Guerrero, with all in favor. (Four votes, unanimous)

5. TENTATIVE SUBDIVISION RENEWAL, Application 96-063, Compadres Family Venture, c/o Marcel G. Camacho, amendment to a previously approved master plan for Ypaopao Estates, Lot R-3, Tract 276-REM, Municipality of Dededo, approved with conditions on June 12, 1997, by the GLUC. DLM Case Planner: Carl Untalan

Mr. Marcel Camacho (Associate for the Applicants/Vice-President of Operations, Federated Sector Enterprises, LLC) explained the project. Also present and comprising the family venture and technical teams were Messrs. Richard Untalan, Eduardo Camacho, Frank Martin, Frank Castro, Jerry Carrera, Chris Murphy, and Tamio Clark. Also mentioned and included in the venture were contractors, title companies, and appraisers. Mr. Camacho explained the original approval (the previously approved master plan, tentative subdivision plan and map), and expanded on the

proposed approval and amenities accompanying it. He stated that the applicants were making a commitment to adopt the baseball field and modify the boundaries for the park area, with full improvements, and they were working with DPR on this. Discussion followed by the GLUC on the prime importance of recreational facilities and that they be developed as soon as possible; advice to the applicants to meet the setback requirements and not use zero lot lines; also, not to expect any waivers "if you're off," and to use the services of a surveyor; and the price range of the houses, etc.

MOTION. Mr. Aguon moved to approve the application, with the conditions of the previous Commission's approval in 1997, to include any new conditions by this Commission, and to include the park at the end of Phase! and before starting Phase!!; affirmed by Mr. Gumataotao, with all in favor. (Five votes, unanimous) (Recorder's Note: Ms. Flynn was present and voted.)

6. TENTATIVE SUBDIVISION RENEWAL, Application 2000-06, Golden Gate Services, LLC, c/o Ignacio F. Santos, renewal of a Tentative Subdivision for a residential subdivision with full improvements for Block 16, Tract 1314 (formerly Lot 2152-R-RNEW-1), Municipality of Tamuning, approved with conditions on May 30, 2000 by the GLUC. DLM Case Planner: Marvin Aguilar

For the record, Acting Chief Planner/Case Planner Marvin Aguilar, read the Staff Report and Mr. Ignacio Santos (Associate for the Applicant/Consultant, Cornerstone, Inc.) explained the project, including amending the previously approved tentative subdivision plan and developing detached single-family residential dwellings, with a recreational center and children's playground. Discussion followed by the GLUC, including queries on the difference in minimum and maximum lot sizes; if the recreation area would be privately owned (affirmative reply); concerns about access through the lot and use of the recreational area by owners/people in Royal Gardens (Royal Gardens had their own recreational area); if the roads would be privately owned (affirmative); cost of the homes; covenants and homeowners association, etc.

MOTION. Mr. Gumataotao moved to approve the application; affirmed by Mr. Aguon, with all in favor. (Five votes, unanimous)

7. HORIZONTAL PROPERTY REGIME, Hibari Guam, co-joined by the Cho Group, c/o Joyce C.H. Tang, Esq., Registration No. 92, application submittal for review and approval of a supplemental filing to the original Declaration of Horizontal Property Regime entitled, "The Replacement Declaration of Horizontal Property Regime of the Alupang Beach Tower" (The Replacement HPR). DLM Case Planner: Carl Untalan

The Vice Chairman informed the GLUC that he had originally created the Horizontal Property Regime (HPR) for the Alupang Beach Tower (ABT), but had not done any work for them in the last ten years or so. Present were Ms. Joyce Tang (Attorney for Hibari Guam Corporation); Ms. Lucretia Aronga (representative, Hibari Guam Corporation); Mr. Terry Brooks (representing new owners of Alupang Beach Tower majority owners, Cho Group). Ms. Tang explained the project at length, including minor amendments to the HPR and the rules and regulations, and other changes and modifications leading to the Replacement Declaration. She added, for the record, that they had no objections to having Mr. Ed Ching sit on the GLUC Board. Mr. Carl Untalan stated that DLM recommended to approve the filing of the Replacement Declaration. Discussion followed, including

queries on parking for residential owners and their spaces being taken for the hotel's use in case the hotel was sold; access to the swimming pool and other recreational facilities; the primary concern by the Alupang Beach Club in their objection to the Replacement Declaration; the arrangement for park areas for barbecuing and changes in that arrangement, etc. Upon the Vice-Chairman's query for comments from the public, Mr. Steven Kasperbauer replied that he was in favor of approving the Replacement HPR.

MOTION. Mr. Gumataotao moved to approve the application; affirmed by Mr. Aguon, with all in favor. (Five votes, unanimous)

V. Administrative Matters

Mr. Joseph Borja, GLUC Executive Secretary, reported on the status of the resolution concerning Public Law 27-91, and the Vice-Chairman and commented on his review of the law. Mr. Troutman also offered explanations and comments, especially the exception on the Yard and Lot Table and legal, nonconforming structures. Mr. Joseph Borja also reported that the Application Review Committee (ARC), as a whole, had voiced their objections at their October 7, 2004 meeting. The Vice-Chairman also submitted his comments on the setback portion, as part of the record.

MOTION. Ms. Flynn moved that the GLUC recommend that the Legislature repeal this law; affirmed by Mr. Gumataotao, with all in favor. (Five votes, unanimous)

VI. Adjournment. Upon the motion by Ms. Flynn and affirmation by Mr. Aguon, the meeting adjourned at 3:34 p.m. (Five votes, unanimous)

Submitted by:

OANNA A. LOBDELL Date

Administrative Secretary II/DLM Recorder

Approved by:

EDWIN K.W. CHING, ESQ.

Vice-Chairman

Guam Land Use Commission

GUAM LAND USE COMMISSION



Commissioner Peter E. Gill Commissioner Frank G. Blaz Commissioner Conchita Bathan

Terezo R. Mortera, Executive Secretary Patrick Mason, Counsel, Deputy Attorney General

AGENDA

August 14, 2008, 1:30 P.M.

Department of Land Management Conference Room 590 S. Marine Corps Dr., Third Floor, ITC Building, Tamuning

- I. Notation of Attendance: [] Quorum] No Quorum
- H. Reading and Approval of Minutes:
 - GLUC Regular Meeting for July 24, 2008
- III. Unfinished Business.
- IV. New Business:

HORIZONTAL PROPERTY REGIME

A. The Applicant, RVC JV (Developer), represented by Atty. Melinda C. Swavely and Jose Q. Taitague, Consultant, request issuance of a Final Public Report on a five (5) tri-level apartment buildings (Regency Villa Condominium), containing twenty-four (24) units and seventy-three (73) parking stalls on Lot 5091#1-1REM-3NEW, Municipality of Dededo, in an "H" (Hotel-Resort) zone, HPR Registration No. 153, under Application No. 2007-41C.

Case Planner: Carl Untalan

- B. The Applicants, Sung Min Choi & Karen Young S. Kim, represented by Atty. Melinda C. Swavely, Esq., request for a Final Public Report for one (1), three (3) storey reinforced concrete building (Happy Condo), containing four (4) residential apartment units, eight (8) parking stalls and other common elements on Lot 10. Block 1, in the Municipality of Tamuning, in an "R-2" (Multi-Family Dwelling) zone, HPR Registration No. 160, under Application No. 2008-78. Case Planner: Carl Untalan
- C. The Applicant, Alupang Beach Tower Homeowner's Association, represented by Atty. Terrence Brooks, Esq., is requesting issuance of a First Supplementary Final Public Report for one (1), twelve (12) storey building containing onehundred and two (102) converted hotel units to residential units, thirty-six (36) existing residential units, two-hundred fifty-seven (257) parking stalls and other common elements on Lot 2015-1-REM-NEW-2 and Lot 131 Rev Unit 1, in the Municipality of Tamuning, in an "C" (Commercial) zone, HPR Registration No. 92, under Application No. 1992-39B. Case Planner: Carl Untalan
- D. The Applicant, Younex International Corporation, represented by Atty. Lawrence J. Teker, Esq., request for a First Preliminary Public Report for four (4) condo towers, twenty (20) residential villas, five hundred thirty-eight (538) parking stalls and other common elements (Emerald Ocean view Park Verace Guam) on Lot 5172-3-1NEW-3, in the Municipality of Tamuning, HPR Registration No. 159, under Application No. 2007-74B. Case Planner: Carl Untalan

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ORIGINAL

GUAM LAND USE COMMISSION MEETING MINUTES



Department of Land Management Conference Room, ITC Building, Tamuning



August 14, 2008 1:35 P.M. – 3:35 P.M. GUAM LAND USE COMMISSION (REGULAR MEETING) AUGUST 14, 2008, THURSDAY 1:35P.M. – 3:35 P.M.

Department of Land Management ITC Building, Tamuning

MEMBERS PRESENT:

Mr. Jay L. Lather, Chairman

Mr. Lawrence S. Rivera, Commissioner

Mr. Peter E. Gill, Commissioner

Mr. Frank G. Blaz, Commissioner

Mr. Terezo R. Mortera, Executive Secretary Mr. Patrick Mason, Counsel, Deputy Attorney General Chairman Lather: Commissioners? (None). You have a COO (Certificate of Occupancy), right?

Melinda Swavely: It was issued several months ago, we were just trying to resolve all these other issues.

Commissioner Blaz: Mr. Chairman, I move that we approve Application No. 2008-78.

Commissioner Gill: Second.

Chairman Lather: Discussion? (None) All in favor of the motion to approve as submitted signify by saying, Aye.

(Chairman Lather, Commissioners Blaz, Rivera and Gill responded, Aye.)

(Four (4) votes; unanimous. Motion pass.)

C. The Applicant, Alupang Beach Tower Homeowner's Association, represented by Atty. Terrence Brooks, Esq., is requesting issuance of a First Supplementary Final Public Report for one (1), twelve (12) storey building containing one-hundred and two (102) converted hotel units to residential units, thirty-six (36) existing residential units, two-hundred fifty-seven (257) parking stalls and other common elements on Lot 2015-1-REM-NEW-2 and Lot 131 Rev Unit 1, in the Municipality of Tamuning, in an "C" (Commercial) zone, HPR Registration No. 92, under Application No. 1992-39B.

Case Planner: Carl Untalan

(Representative(s)/Speaker(s) present: Attorney Terrence Brooks; Richard Reed (R&K Architects)

Carl Untalan read Staff Report including, application chronological facts; location of the one (1) 12-storey building; 1-storey building on the beach side; 3-storey building left side facing Marine Corp Drive. (See Attachment "C", under Staff Report dated August 06, 2008; Registration No. 92; Application No. 1992-39B)

Terry Brooks: Good Afternoon, Terry Brooks on behalf of Mr. Hee Cho, owner of about 90% of the Alupang Beach Tower Condominium and the President of the Homeowners Association, and also with me is Richard Reed of R&K Architects who is been doing the architectural work on the project. I apologize sincerely to the Commission for the complexity and confusion in this case; we felt it important that we give the Commission a full view of what we wanted to do in our overall vision for this project. I've handed out a simple spreadsheet which tries to break down the phases that we are looking at in this. As you know, there was Preliminary and a Final Public Report previously issued; in that Final Public Report the Commission approved a 138 condominium units; in the replacement HPR, the Commission approved an expansion of the ABT condominium

and at the same time took a 102 of the condominium units and converted them into one large condominium units, so basically that was done so that they could meet parking requirements. The replacement HPR added a second restaurant and the second restaurant added parking requirements that could not be met unless they converted the condominium units into a hotel unit and the reason for that is a condominium unit requires one parking space per every condominium unit, whereas a hotel unit requires one parking space for every 4 units, so by making this conversion they were able to meet the parking requirements, not request any variances and get the approval for the replacement HPR.

Chairman Lather: Let me just stop you, so I'm clear then, the first column on your document you just gave us is the way that is configured today as approved by the Land Use Commission.

Terry Brooks: Yes.

Chairman Lather: And so there's a 102 hotel rooms, 138 residential units in the 12-storey building.

Terry Brooks: Yes.

Chairman Lather: There's a restroom and a fitness room.

Terry Brooks: That's a restaurant.

Chairman Lather: In building three, there are six (6) hotel units?

Terry Brooks: There are six (6) hotel rooms that are part of the overall hotel unit; there's a 108 hotel units total; 102 are in the main 12-storey building; six (6) are in the adjacent parking annex and another restaurant.

Chairman Lather: Where are the two (2) commercial units?

Terry Brooks: Our commercial unit, one which is in a separate adjacent building to the right of the Alupang Beach Club basically, and the second one is a small store currently in the lobby of the main building, but that would be converted into an office space.

Chairman Lather: Okay, so now I understand where you are building this today. Proceed.

Terry Brooks: What we request in our First Supplemental Report, I think it is a misnomer; I don't think there is anything that is called a Supplemental Final Report, it is merely in the law; you have Preliminary, Supplement, Final, and then Supplementary after that, so basically all we are asking for is to allow us to take these 102 units that were turned into hotel unit and change them back into condominium units which they were previously and so what this would do is basically get us back to where the original

HPR was with a 138 condominium units. We do have plans for further expansion, however, we don't think...to make this plans, there is going to be commonary interest for the new buildings, the new units, and so to address that issue we needed to show the Commission what the overall final plan would be once these units are completed, so that is why we submitted a spreadsheet with the declaration that showed all those plans and all of the commonary units and all the parking spaces so that the Commission would know where we expected to go eventually.

Chairman Lather: On this document you just gave us, the third column is future action before the Commission.

Terry Brooks: Yes.

Chairman Lather: Today you are requesting the center column only?

Terry Brooks: We are requesting only the approval of the modification of the hotel unit into condominium unit.

Chairman Lather: So based on what you said, the first obvious question leaps right out at me is, you told us that the justification for the conversion of hotel rooms was based on the lack of parking, so if you go back to condos would you have that problem again?

Terry Brooks: No, because we have eliminated the restaurant. The restaurants are commercial space that were quite large and took up a lot parking requirements; by removing the restaurants we freed up many parking spaces and we are well under the requirements. There is 257 parking spaces and at the end of the day there will be a 158 units, so going by a one to one ratio, there are more than enough parking spaces available. And again, why couldn't we just go and convert 102 units back into condominiums without doing anything else and without showing the Commission anything else was because by doing that they would be in violation of the parking requirements. Those restaurants are closed now and construction would begin soon, but at this time we do not want to sell any of those units, we don't want to take deposits on those units and again the whole idea of a Preliminary Public Report is to protect buyers of units that are not yet completed, so we think that by doing this way we have covered both sides of the coin; we allow the simple conversion of a 102 units that used to be condominium units back into condominium units but at the same time we do not seek any approval of additional condominium units until those units are completed and then at that time we would come back with our Occupancy Certificates and bring it back before the Board. We have done some research; Mr. Reed did a density calculation this afternoon for me, because I understand that that could be an issue, and according to him in this Commercial zone we could have over 200 condominium units and the total would be only 158, so that is not an issue, we believe.

Chairman Lather: In my personal opinion, if your submitted documents including your revised declaration that you submitted to us today was to address the center column that you just told us, this would be a very easy hearing. The problem is that your

documents address all the future modifications as well which became so complicated for us that it is impossible for us to entertain, that was our whole issue here.

Terry Brooks: I understand that, but if we had just gone in for 102 units then we wouldn't have been able to tell you about the restaurant that would no longer exist.

Chairman Lather: No, no, that would have to be included. Like I say, the center column that you presented, if you would modify your request today to very simply come in for a Supplemental to your Final HPR that converts back the 102 units from hotel to condo and eliminate the restaurant just as you proposed here I would have no problem, I could clearly see that. The problem comes from the second phase where your document show the creation of additional units and conversions of... well here it doesn't show but in your documentation there was some confusion about the commercial units as well but they just show two units here, that is where the confusion arose on the building. I'm sounding a bit negative to what you are trying to do because I think you're trying to do what is right to reveal everything to us, but I'm kind of telling you that we don't want to hear all your future plans, just tell us what you're going to do and we can approve it in phases, because you are so complicating the documentation by the future use.

Terry Brooks: The other issue is the ownership interest. If we were to just leave the ownership interest as we have when the new units came in, we would have to reallocate and it would be very, very difficult to do that especially if some of these units are sold, so we want to again put before the Commission the allocation of the common area at this point because that is the way that it is going to be.

Chairman Lather: I understand, but I told you earlier before we started the meeting that our confusion is, we are mixing a Supplement to your Final which we can do with a Preliminary for future development, and that is where the statute doesn't give us a provision to handle that.

Terry Brooks: Well it does, and that is the Supplemental Report.

Chairman Lather: We disagree on that.

Terry Brooks: Because once the Preliminary is done and the Final is done then the next step are supplementary report which is to bring before the Commission the changes that are propose to the unit, and again the whole reason for a Preliminary is to protect purchasers of un-built units and the reason why we do not want to put this under a Preliminary Report is, how do you separate one from the other? You have a 138 units that are complete and built, so would you not be able to sell those units? You couldn't get in a situation where you can't sell the existing units without completing the propose units.

Chairman Lather: And by the same way, how do we approve? A Preliminary Report is part of a Supplement to a Final on your future units.

Terry Brooks: We're not asking for that approval.

Chairman Lather: I believe you are asking for a Preliminary because you're allocating your interest for the owners right now.

Terry Brooks: All we're asking for is the conversion of the 102 units, that is clearly what the Supplemental Report says.

Chairman Lather: How do you allocate future interest on your next project when you just said, when you build the next phase you're going to have to reallocate ownership interest and units may be sold; your HOA may not even approve such a change, so aren't you in fact asking for Preliminary HPR on future units? I guess that is the problem because if you exclude it you run a risk of your HOA denying it once you sell the units.

Terry Brooks: Exactly, that is why we got the approval of the Homeowners Association now.

Chairman Lather: But that is a Preliminary for a future development mixed in with your supplement for a Final. I've talked enough, Commissioners ask questions.

Commissioner Blaz: You are saying, you want to present the whole picture not just the conversion of 102 hotel units back to single-family condominiums, but I'm still wondering why you don't want to combine the whole packet and ask it one time. I have trouble understanding how you are going to allocate expenses. The air conditioning part, for example, you have floors that have central air, then you have floors that have split units and I don't know you're going to spread the cost. I assume you are going to spread them evenly amongst those served by the central units, but then you have other units that are served by split units; are those guys going to be paying their own electric bills? Will they also be charged and allocated the cost for the central air? How is that going to work because you have different types of air conditioning system in the condo. I also looked at the percentage ownership chart and it is different from the A-1 chart. What is the difference?

Terry Brooks: This is another complication that resulted from litigation that was previously done in the past.

Commissioner Blaz: Yes, and going back to that problem that you had with the owners and the commercial users, that is what you are referring to, right?

Terry Brooks: Yes.

Commissioner Blaz: You are stating that for now the owners are going to assume the common cost for the commercial user, but then you are saying, sometime down the *road* you are going to allocate evenly amongst the rest of the apartment unit owners.

Terry Brooks: Those are only allocated among the units owned by Mr. Cho, we are not affecting any of the units that are owned by other private owners.

Commissioner Blaz: I thought that was your agreement with the commercial users that Mr. Cho would assume the common cost for the commercial users, but what I am saying is that after, sometime afterwards when some issues are settled you are going to reallocate the cost evenly amongst all the users. Honestly, Mr. Brooks, *there is so much I do not understand about this project.* I really think we should have a work session with you in order to get into the nuts and bolts of this.

Terry Brooks: That is fine with us, and what I wanted to do today was to put all of our cards on the table so that you know where we are at, what we propose and to get feed back from you on what you think would be the best course of action, and we are willing to work with you to do whatever it takes.

Commissioner Blaz: There is something very obvious that I also like to point out Mr. Chairman, on the floor plan that you presented, I can't read or see what your plans are. If you are presenting this to a prospective purchasers you must have a document that he can look at and *compare with* his onsite inspection when he wants to make a purchase. I assume you have a different design for the different buildings or you may have different design within the same building for condo and each of those design must be presented in a very clear and readable fashion so that we can take a look at it.

Terry Brooks: That is understandable, and we can give you the larger one, we just shrank it down so that it would fit within this package neatly, but as far as the 12-storey building goes its been approved on at least two different occasions previous and nothing within the 12-storey building which is all we are talking about today has changed, so that is completely identical to the old drawings as far as the layouts of the rooms go.

Chairman Lather: I think what Commissioner Blaz is referring to is the fact that whatever is approved by the Commission becomes a report that must be given to purchasers and the floor plan must be legible by each purchaser, so there has to be a resubmission of that particular part of it.

Terry Brooks: That is fine, we could resubmit with the larger but at this time we defer to the Commission, and if its your pleasure to put this over till the next meeting, we would like to meet with you and to try to meet whatever concerns that you do have.

Commissioner Blaz: It is not the concerns; we are trying to comprehend what you want to do. When you say, you don't need an escrow agreement, for example, we want to be very sure that what you are going to do is not going to need an escrow agreement.

Terry Brooks: The escrow agreement is in the preliminary situation where you put money in an escrow and then you buy your unit at some future time, but we are talking about units that is already constructed that people are already living in.

Commissioner Blaz: But people may want to reserve a unit in which case you are probably going to demand from them a down payment of some sort or a deposit of some sort which you are not just going to put into...

Terry Brooks: I understand that, but the escrow that the Preliminary Public Report envisions is an escrow where the building is not yet completed and you cannot move into the unit tomorrow, whereas these 102 units are complete, people are living in them now and title can be transferred if they were individual condominium units tomorrow.

Chairman Lather: I think what is important to know first of all, even though we are seven (7) member commission, it takes four (4) for any action by the Commission; there are only four (4) present today, so every action has to be unanimous given the quorum that we have here today. I think the appropriate course of action would be, if you concur with this, is to schedule a technical work session, I would propose exactly a week from today at the same time 1:30 p.m., at this location at which time all Commission members and the public is invited to participate and review the technical aspect of the project, at which time there would be no decisions made, it would just be a technical review only and put it back on the agenda for two weeks from today for a final review of the action.

Terry Brooks: That would be fine.

(There being no objections, Item C., Alupang Beach Tower Homeowner's Association; Application No. 1992-39B, to be continued on the next GLUC Regular Meeting August 28, 2008)

D. The Applicant, Younex International Corporation, represented by Atty. Lawrence J. Teker, Esq., is requesting issuance of a First Preliminary Public Report for four (4) condo towers, twenty (20) residential villas, five hundred thirty-eight (538) parking stalls and other common elements (Emerald Oceanview Park Verace Guam) on Lot 5172-3-1NEW-3, in the Municipality of Tamuning, HPR Registration No. 159, under Application No. 2007-74B. Case Planner: Carl Untalan

(Representative(s)/Speaker(s) present: Attorney Lawrence Teker; Dave Tydingco; Willy Flores, Engineer.)

Carl Untalan read Staff Report including, chronological facts: previous Commission action August 19, 1991 Zone Change from "R-1" to "R-2"; November 29, 2007 Zone Variance for height; construction of the project currently ongoing. (See Attachment "D", under Staff Report dated August 08, 2008; Registration No. 159; Application No. 2007-74B.)

Chairman Lather: Before we get into the technical merits of the project and hear from the applicant, the issue has been brought to my attention by other Commission

GUAM LAND USE COMMISSION Department of Land Management

RESOLUTION 2008-03

Establishing a Policy Definition for the Application of Minimum Lot Areas in the Calculation of Residential Density in a C Zone

WHEREAS, 21 GCA §61501. Minimum Yards and Lot Areas Established (b) Table presents a tabular explanation of the minimum lot areas for certain uses; and

WHEREAS, the table presented in 21 GCA §61501 (b) specifically indicates that Lot Area for a Dwelling Unit in a Commercial Zone is 400 sq. ft.; and

WHEREAS, Paragraph (e) of 21 GCA §61502 General Yard and Area Requirements further clarifies the table by stating that "A hotel or motel, while considered a multi-family use, requires a minimum of four hundred (400) square feet of lot area per living unit in a commercial zone."; and

WHEREAS, when calculating multi-family density, the GLUC correctly applies the minimum lot area of 1,250 sq. ft. per dwelling unit in an R2 Zone and 1,012 sq. ft. in an H Zone;

NOW, THEREFORE BE IT RESOLVED that, for purposes of establishing a clear policy for the proper application of minimum lot areas in multi-family density calculations in a C Zone, the GLUC hereby adopts the following Policy:

- 1. The 400 sq. ft. minimum lot area contained in 21 GCA §61501 (b) shall only apply to hotel and motel developments as conditional uses in a C Zone.
- 2. When calculating residential density for multi-family projects (other than hotels and motels) in a C Zone the correct minimum lot area shall be 1, 250 sq. ft. per dwelling unit.
- 3. This policy shall apply proactively to all applications received by the GLUC on or after the date of the passing of this resolution. Applications which were received prior to the passing of this resolution shall be "grandfathered" under the historical action by the GLUC.

3. This policy shall apply proactively to all applications received by the GLUC on or after the date of the passing of this resolution. Applications which were received prior to the passing of this resolution shall be "grandfathered" in.

JAY L. LATHER, Chairperson

GUAM LAND USE COMMISSION



Commissioner Poler E. Gill Commissioner Frank G. Blaz Commissioner Conchita Bathan

Terezo R. Mortera, Executive Secretary Patrick Mason, Counsel, Deputy Attorney General

AGENDA

August 28, 2008, 1:30 P.M.

Department of Land Management Conference Room

590 S. Marine Corps Dr., Third Floor, ITC Building, Tamuning

Notation of Attendance: [] Quorum [] No Quorum

- II. Reading and Approval of Minutes:
 - GLUC Regular Meeting for July 24, 2008
 - GLUC Regular Meeting for August 14, 2008
- III. Unfinished Business.

HORIZONTAL PROPERTY REGIME

A. The Applicant, Alupang Beach Tower Homeowner's Association, represented by Atty. Terrence Brooks, Esq., is requesting issuance of a First Supplementary Final Public Report for one (1), twelve (12) storey building containing one-hundred and two (102) converted hotel units to residential units, thirty-six (36) existing residential units, two-hundred fifty-seven (257) parking stalls and other common elements on Lot 2015-1-REM-NEW-2 and Lot 131 Rev Unit 1, in the Municipality of Tamuning, in an "C" (Commercial) zone, HPR Registration No. 92, under Application No. 1992-39B. (GLUC Mtg. 8/14/08 - Continuation to 8/28/08)

Case Planner: Carl Untalan

B. The Applicant, Younex International Corporation, represented by Atty. Lawrence J. Teker, Esq., is requesting issuance of a First Preliminary Public Report for four (4) condo towers, twenty (20) residential villas, five hundred thirty-eight (538) parking stalls and other common elements (Emerald Oceanview Park Verace Guam) on Lot 5172-3-1NEW-3, in the Municipality of Tamuning, HPR Registration No. 159, under Application No. 2007-74B. (GLUC Mtg. 8/14/08 - Continuation to 8/28/08)

Case Planner: Carl Untalan

IV. New Business:

TENTATIVE SUBDIVISION

- C. The Applicant, Wellborn LLC (Yun-Ju Chen), represented by Rosario & Associates, request for a Tentative Subdivision for one hundred eighteen (118) single family dwelling, including seven (7) one acre commercial lots, on Lots 7110-NEW-NEW-1, 7110-NEW-NEW-2 & 7110-NEW-NEW-R2, in the Municipality of Yigo, under Application No. 2008-62 Case Planner: Marvin Aguilar
- V. Administrative Matters.
 - <u>Resolution 2008-02</u> Establishing a Policy for the Implementation of E.O. 2001-36 "Relative to the Permitting and Construction of Wireless Communication Towers".
- VI. Adjournment.

Island of Guam, Government of Guam Department of Land Management Office of the Recorder

File for Record is Instrument No. 780218

On the Year & Month O Day 3 Time 8/

Recording Fee

Receipt No.

Deputy Recorder

JOEL D. ANVENORCRUZ

Above Space for Recorder's Use only

ORIGINAL

GUAM LAND USE COMMISSION MEETING MINUTES



Department of Land Management Conference Room, ITC Building, Tamuning



August 28, 2008 1:35 P.M. – 5:05 P.M. GUAM LAND USE COMMISSION (REGULAR MEETING) AUGUST 28, 2008, THURSDAY 1:35P.M. – 5:05 P.M.

Department of Land Management
ITC Building, Tamuning

MEMBERS PRESENT:

Mr. Jay L. Lather, Chairman

Mr. Frank G. Blaz, Commissioner

Mr. Lawrence S. Rivera, Commissioner

Mr. Art Salomes, Commissioner

Mr. Terezo R. Mortera, Executive Secretary Mr. Patrick Mason, Counsel, Deputy Attorney General For the record, Willie Flores informed the Chairman that Mr. Dave Tydingco is off-island on a family medical issue and apologize for not being at the hearing.

Unfinished Business:

A. The Applicant, Alupang Beach Tower Homeowner's Association, represented by Atty. Terrence Brooks, Esq., is requesting issuance of a First Supplementary Final Public Report for one (1), twelve (12) storey building containing one-hundred and two (102) converted hotel units to residential units, thirty-six (36) existing residential units, two-hundred fifty-seven (257) parking stalls and other common elements on Lot 2015-1-REM-NEW-2 and Lot 131 Rev Unit 1, in the Municipality of Tamuning, in an "C" (Commercial) zone, HPR Registration No. 92, under Application No. 1992-39B. (GLUC Mtg. 8/14/08 – Continuation to 8/28/08) Case Planner: Carl Untalan

(Representative(s)/Speaker(s) present: Attorney Terrence Brooks, Hee Cho, and Mr. Richard Reed, Architect.)

Chairman Lather gave a brief summary of the HPR including receipt of revised document and reviewed by staff; reminded the public that this is a continuation from the last hearing.

Attorney Brooks briefly explained the project including reverting the project back to its original form which is one hundred and thirty-eight (138) condominium units; agreed to revised the documents to conform with the request; any further development in the future would come back to the Commission.

Chairman Lather: Thank you Terry, I appreciate that. I want to tell you on behalf of all of the Commissioners, you have done an excellent job on this; it has been a difficult one for all of us to get our hands around.

Attorney Brooks: It has been difficult for us as well.

Chairman Lather: It is a complicated issue, and so when we met in our technical session we kind of worked out a course of action for you and in a timely manner. I am sure you put in some overtime hours and you got this document to us electronically on Friday, and then the hardcopy, I think, on Monday and we really appreciate the work you have done, but subsequent to our meeting last Wednesday, I guess I am just going to turn the floor over to you to explain what Commissioner Blaz determined and give us the historical position on what happened.

Commissioner Blaz gave a history of what transpired on the first action of the project in 1990; in reviewing the records he found the following: 1) density was determined on land consisting of public (beach front) and private lands; discussion on the park facility and exchange that took place; park was deeded to

the government; original arrangement was the condominium assume the responsibility for maintenance/care of the facility; 2) Commission approved one hundred and thirty-eight (138) units (calculation based on 102); Commission approved a variance of 35% (translates to 36 additional units) to increase the number of authorized units to 138; 1994 additional condominium units/commercial space which created parking problems; previous Commission had long/heated discussion on the number of parking; Commission approved 136 condominium units and 253 parking units; further stated that any additional units requires a Variance; recommended to revert back the application and submit another request for a Variance.

Attorney Brooks: We hear the Commission and that is what we kind of discussed a week ago but we are kind of pushed in the direction of going ahead with the Phase I and Phase II, but we didn't know what we know now so knowing that we do accept the Commission's recommendations and do agree to handle it in that manner. The one area were I would disagree is with respect to the park. I do have the Final Public Report from the original HPR and in that it basically has the same language that is carried through the first one, the Replacement Declaration and this Declaration that we proposed and that clearly states the government park adjacent to ABT and any adjoining government land may be adopted by the Association through an Adopt the Park Program or other lawful means and it would require the approval of the proper agencies of the Government of Guam which have never been obtained and require a majority of the Board of Director's of the Association and approval of 75% of the unit owners, so in the First Replacement and this declaration this language has always been the same. The only differences that we have said is that we have reduced the number for the approval of the unit owners to 50% because I am sure you are aware that it is very difficult to get 75% of unit owners, it is even difficult to get a quorum once the ownership is spread out, so we get a propose reducing that to more than 50% of the unit owners to adopt the park but this is the language from the initial Final Public Report that was issued by the Commission and it is also carried through in the Replacement Declaration and we would request that it would be carried through at this time in this Declaration.

Commissioner Blaz: When the question of maintenance of this park came up, it is my understanding that the Association was ready to accept the responsibility but a letter from Parks and Recreation advised them that no adjacent landowner can benefit from the existence of a government park next door. I do not know what the big discussion was then, but I believe it had a lot to do with the hotel/park being built at that time, and there was some concern that they were going to use the parking area for their own use and somebody came up with the idea to avoid this kind of conflict to just withdraw any kind of association with developers and not have them assume this responsibility, but I thought in the very beginning the condition for the exchange and property (the beach front) and the site and park area was initially based on some cooperation between the Association and Parks and Recreations for maintenance of the park.

Attorney Brooks: I can not tell you what happened back then, all I can tell you is what is in the Final Public Report and that is...may and it is not a mandatory so we would request that that language continue at this time.

Commissioner Blaz: Unless I come up with an NOA which says that you were, but that was part of the condition.

Attorney Brooks: But other than that we agreed to abide by the Commission's request on the 138.

Chairman Lather: Let's come up with a procedure then that would suit your needs. We are a little stuck here, I think we have two options, 1) we can proceed with what you presented us and try to go through it today and amend it, 2) we put this back on the agenda and you come back with the revised document to do a reversion back.

Attorney Brooks: We can't really revert back because the project been changed since the original document was filed. We now have the parking structure which didn't exist back then and basically we have a bigger space, so I don't think that it is possible to just revert back. I think what we can do, looking at this, starting on units in general (page 4) anywhere where it says 158, that would be changed to 138, and that is in a couple of other places but that would be taken out.

Chairman Lather: And Phase II would be taken out.

Attorney Brooks: And any reference to Phase II would be taken out and we would simply insert a section that would call that, privately owned space.

Chairman Lather: That is my problem. How do we address that Terry because I am troubled by that.

Attorney Brooks: Well, it is privately owned space.

Chairman Lather: Owned by whom?

Attorney Brooks: It is owned by Mr. Cho.

Chairman Lather: But if you do an HPR and you have common elements that would constitute a unit.

Attorney Brooks: It would be a privately owned unit.

Chairman Lather: It is going to be 139. I need to find a way to get to the end point here and that is what I am having trouble with because we have this extra units. The problem here and I don't want to berate you or Mr. Cho on this, we

weren't here when this happened but the record appears and I say that very carefully, it appears to show that six (6) additional units where built in violation of the NOA, that is what we are grappling with here, so if we try and roll this back and say, how can we make it right; so first of all if you were to phase II, we are back to 138, that is good, I think we are back within the approval; we are still stuck with the six (6) phantom units here.

Attorney Brooks: We have no problem demolishing those.

Chairman Lather: But the space still exist and its either going to have to be a unit owned by somebody. I think the ultimate solution for us that it goes to common area; it could be developed as a recreational facility, health club or some amenities for the HOA, but if it were to be a unit, it is troublesome.

Attorney Brooks: Mr. Reed just came up with a brilliant suggestion as architects are prone to do, basically we would make that a part of one of Mr. Cho's units, one of the existing units.

Chairman Lather: You can't, it is not contiguous, unless I am wrong; is it contiguous?

Richard Reed: Define contiguous?

Chairman Lather: Neighbor walls, physically contiguous. You can't have an area 100-feet away and call that part of my unit.

Richard Reed: It is not contiguous.

Attorney Brooks: To make it a common area, I don't think Mr. Cho is ready or willing to do that but we are willing to leave it vacant and unused.

Chairman Lather: Here's my problem with that and I am not trying to insinuate any bad intentions, but if it is left as a unit owner, even vacant, that begs the question still, what happens to this space and it implies future development and we need to put finality on this project. We are back to what was approved, it was 138 units.

Attorney Brooks: Actually there were also three commercial units that were approved, so we would make it the third commercial unit.

Chairman Lather: I am okay with that.

Commissioner Blaz: I don't understand that part. You are going to convert the open space into what?

Chairman Lather: A commercial unit. When I say I'm okay with it, I mean procedurally, you have to look at the details.

Attorney Brooks: We would call it the third commercial unit, however, at the same time we couldn't use it because of the other requirements; I don't think you need a business license for it.

(Brief discussion between Chairman Lather and Attorney Brooks followed.)

Commissioner Blaz: I have no problem using that as commercial building just as long as it doesn't end up being developed and used, then we have to come back and calculate what are the parking requirements, whether or not it would go back to the same problem that they had before exceeding the parking requirement.

Chairman Lather: If we do approve it as a commercial unit, we are going to have to designate parking for the floor area for commercial unit and they may not be enough parking.

Commissioner Blaz: You are controlled now by parking when you assign that as commercial building. Right now if it is empty, I don't know whether you want to assign parking if its empty but the moment you put it to use you start calculating; if it is a restaurant, the number of parking is calculated one way; if it is an office, it is calculated another way, but you end up calculating the additional parking requirements. I do not want you to go back to the same problem you had before where you had to convert to hotel in order to accommodate parking, that has to be avoided, it does not happen again.

Attorney Brooks assured the Commission that they would not use the space at this time; less burden on the infrastructure because the usage would go away.

Chairman Lather asked how did the additional six (6) units get built and under what approval.

Attorney Brooks responded he had no idea, did not prepared those documents; they just purchased the units.

Richard Reed: Again, for my curiosity in a situation, I wonder when the commercial zoning was applied to the property as well.

Chairman Lather: As oppose to what?

Attorney Brooks: What we were thinking, I think what Mr. Reed is thinking is when it was originally approved it was approved under a different zoning designation.

Chairman Lather: What was it?

Commissioner Blaz: I think what was being discussed way back was a Hotel zone but there is no record that it is a Hotel zone.

Chairman Lather: Let's get staff to get on the record here.

Carl Untalan: As I reviewed the record, the actual recordation of the record shows that the staff report shows it as Hotel zone, even during the minutes that we were referring it to Hotel, but I don't know as to why they were looking at it as Hotel because the Zoning District Map for Tamuning enacted back in 1967 and it was always showing it as a Commercial area. At least I don't know when it was zoned a Hotel at one time, if it was ever a Hotel zone.

Chairman Lather: What you are saying is that we have no record of an H zone for that area; we have to assume it was a C zone at this point.

Richard Reed: And then as a result of that, would you be able to apply the C zone density requirements?

(Brief discussion between Chairman Lather and Carl Untalan on this matter followed.)

Chairman Lather: I think the Commission is fairly well convinced at this point that the record is quite clear, that this project was approved for a 138 units with a density variance of 35% which is more than adequate for the project, in this case. I think you are going to find that the Commission is not going to entertain anything pass that.

Attorney Brooks: We are not requesting that at this time.

Chairman Lather: I understand and I appreciate what you are saying, we still have this 6-units that are sort of floating in the eve through there.

Attorney Brooks: Those 6-units will be demolish.

Chairman Lather: But what becomes of the space? In other words, you have a condominium complex with all the common elements and now you got this space floating in the parking area and so we need to define that space legally into the declaration.

Attorney Brooks: We could look at it as storage space for now, if you want to do that.

Chairman Lather: It's those last two words that scare me Terry, for now.

Attorney Brooks: Whatever we define it as, we wouldn't be able to change it until we came back to the Commission and got approval to change it.

Chairman Lather: That's troubling me; everything you're saying implies that you are going to be back in a short time with a new plan.

(Brief discussion between Attorney Brooks and Chairman Lather followed.)

Chairman Lather: Tell me how you like to proceed. Let's take some action, let's make a decision.

Attorney Brooks: We like to have approval of the 138, that's our priority.

Chairman Lather: From your side, how are you going to address the 6-unit space.

Attorney Brooks: The 6-unit space would be part of a commercial unit that would be demolish and cleared out so those units would not exist anymore, and we can assure the Commission that would take place.

Chairman Lather: So condition of approval would be that area becomes designated as CU3 (Commercial Unit 3) and applicant is prohibited from use.

Attorney Brooks: Yes.

Chairman Lather: So you wouldn't apply parking formula to it.

Attorney Brooks: No.

Commissioner Blaz asked for clarification on Attorney Brooks' request.

Chairman Lather: Basically, they are saying take the commercial unit (6-units) turn it into Commercial Unit 3 and then a condition of that approval would state that, no use would be allowed, implicit in that is that you will use it for storage.

Attorney Brooks: No commercial activities, nothing that would require a parking or anything; no residential use.

Chairman Lather: What troubles me is a former Commission approved this and somehow six (6) additional units got built in that area, that's what troubles me, so now we're going to approve it and say the space is there but you can't use it; well why wouldn't you just built them like the last people did; they got away with it.

(Brief discussion between Chairman Lather and Attorney Brooks followed.)

Chairman Lather: Okay, let's hold you in abeyance for a while while we entertain public comments on this issue. Is there a public comment on this issue?

PUBLIC COMMENTS:

Steven Kasperbauer: Steven Kasperbauer, President of Alupang Beach Club (Local Tourism Company) and long time commercial condominium owner at Alupang Beach Towers. As a matter of fact, I was an owner in the property before the Alupang Beach Towers. I sold out my interest before the 6-units were built and the commercial unit that's attached to it. I appear here today, well I was going to object to what was put in here but I don't know what's being put on the table anymore. To the application as it is presented at this point, and as some of you know or recall in the past, I supported the Alupang Beach Towers Owners Association when it sought the Replacement HPR. I must however object to this current request because it is a material alteration to the presently existing structure and operations. It is also not in the interest of the public, the individual condominium owners or the surrounding neighborhood that an application of this sort for several reasons be approved. I do want to make sure that I am clear that I do not object to the occupation of the majority owner Cho group or the business that they were doing as it was approved during the time of the Replacement HPR, I am fine with that but to change the type of business and what's going on there I think it is different, I think that the Commission is seeing Parking is always been a problem, maybe if you ask me a couple of questions I can answer them but I just want to let you know that I haven't had a problem when the Replacement HPR was put into place. I didn't have anything to do with the construction of the commercial restaurant at that time or the 6units upstairs and the addition of the parking garage but somehow it got put up and people needed to move on and so we agreed there's going to be a transfer; we agreed that Cho group could take that transfer and we wouldn't contest to how they run their Association or the Association and the business on there which was the 102 unit hotel rooms and the condominiums that were there but if anything is to change what is there, we do have an objection.

Chairman Lather: What are the bases of your objection? I don't quite follow because the basic change is the same number of units to go from hotel to condominium.

At this point, Steven Kasperbauer gave a history on how the public park was built before the Beach Tower; approved original HPR had the word "hotel" listed once which was enough to allow it to be a mix-condo hotel; recalled when it started out as a condominium (was designed to be sold as an exclusive, upscale condominium); turned into a hotel before the Replacement HPR was presented; did not contest it because it relieved some parking issues; concerned if it changes it would change the need on parking; further stated that he has his own space in the condominium that were set aside, reserved but currently he can't even park there at night, no parking space, it is full; reiterated that he oppose the change from "hotel" to "condominium" because he feels it would increase the amount of parking issues in that area; commented it is a confusing project;

reiterated he has no complaints to the way Cho group occupation are of the place as long it is the way it was presented in the Replacement HPR (hotel of 132 units/condominiums); commented that a meeting in April he was not the only one who did not agree with the changes, however, it presented that the owners approved the changes; noted in the Replacement HPR document (Section 12 & 11) a meeting that took place in April which he was not notified showed that there was some kind of action of the Homeowners (meetings are suppose to be announced and send out); commented that even if you control 90% does not mean you stop having meetings and just say, today I feel like approving this.

Chairman Lather: Let me just interject. It is possible, I could see where they wouldn't have to have a meeting, although it would be bad policy but conceivably if at the meeting that was announce that you were at, if the Association authorized the Board to proceed with the application, then the Board could do it arguably without having further meetings. I could see a way but I'm not saying that's what happened, I don't know.

Steven Kasperbauer: I like to refer to Section 18 of the document that you have Page 18, Section 21 where it says, Alteration and Transfer of Interest. This is the amendment to Replacement HPR that was delivered to my office by Brooks Firm.

Chairman Lather: That's been replaced today by new documents.

Steven Kasperbauer read Section 21, Alteration and Transfer of interest: The common element interest and easements appurtenant to each unit shall have permanent character and shall not be altered without the consent of all of the unit owners affected..."

Steven Kasperbauer: It did not say, a majority; it said all and it's always been that way.

Attorney Brooks: We are not affecting any common element interest or easements.

Steven Kasperbauer: How do we know, you keep changing things without telling us, we don't know what's going on here. I can put to you very clear, 21 GCA Real Property, Chapter 45 Horizontal Property Act: Horizontal Property Regime 45103, whenever the sole owner or sole lessee or all of the owners or all of the lessee of the property expressly declare that through the execution and recordation of a Master Deed or Lease together with declaration in which declaration shall set forth the particulars of his or their desire to submit the property to the regime established by this chapter there shall thereby be establish as Horizontal Property Regime. It says all, not majority.

Chairman Lather: I don't want to argue the point because I'm not an Attorney, but I think arguably that was agreed and there was an HPR, this is a Supplemental so the same rule probably wouldn't apply to a Supplemental.

Steven Kasperbauer: What I'm saying is that when you change a building from 102 hotel units to 102 condominium units, that is not just a small modification.

Chairman Lather: I agree with you.

Steven Kasperbauer: That's like changing the Hilton into condominiums. Can you agree that that is a whole different application than an amendment?

Chairman Lather: I agree with that, but I think under the rules our feelings may be sort of irrelevant to what the rules say because I checked under statutes they probably can't proceed. Again, I'm not suggesting that's good policy but I can see a mechanism going to do it, but Terry would comment after you're done, I'm sure.

Steven Kasperbauer: Well, overall, like I said, when it came down supporting and agreeing to the Replacement HPR, the way it was working, in order to keep harmony in the area and work together, move forward. I mean, I've been tied to this property since 1986 and I thought it was in the best interest to move forward in that direction and we both agreed but this is a completely different approval process than what has been put in the Replacement HPR.

Chairman Lather: Right, I agree with that statement, so just that I understand Steven, your objection is primarily going to reversion back to a condominium is primarily due to the impact on parking.

Steven Kasperbauer: Not only parking it is also... I'm affected, my business value. It was designed to be basically a special type of hotel/condo or condo, one or the other, and I felt that the value of my business is impaired as well and I think that we have that too listed that no change would be allowed if it impairs the value of any unit owner and so I haven't had any proof that such a change would increase my value or my rights, or my parking or anything else or my...just the way it is. Having a commercial unit next to a commercial unit is pretty good. Remember the old restaurant that was there and the restaurant been closed putting residents next to a commercial operation like mine may cause some I mean, we have agreed in the past in preparation for the Replacement HPR that ABC would be given special considerations because of the type of operation and I don't see those reflected at all in any of the documents. I mean, ABC currently has the right by the Homeowners Association at any time to do its improvements as it wants, put up signs, do things without the approval of the Board and the reason for that is over 90% of that place belongs to one person and they agreed to it, and they agreed that their successors would handle it but the document here doesn't reflect that, doesn't reflect that we can

do those things, that we can move around and be independent the way we want and so you're going to have confusion all the way through and so would future Homeowners Association if they start selling these units off that carry this responsibility of what we agreed to and it's not fully laid out there.

Commissioner Blaz: In what document was that condition included?

Steven Kasperbauer: It was a private agreement to ensure that we could work together in harmony.

Commissioner Blaz: Why couldn't it remain in that fashion between you? Why look for it in the document if it was never in the document?

Steven Kasperbauer: Because it's confusing, I mean, unless everybody has that document which I think maybe has more to it than is needed by future individual owners, I think you can understand that, it would always create a conflict that successors of the that Homeowners Association and those majorities would be led by this document that you approve.

(Brief discussion between Chairman Lather, Commissioner Blaz and Steven Kasperbauer followed; Steven Kasperbauer recommended that the application be disapproved.)

Commissioner Blaz: On the question of parking, do you really object to an owner using this property the way he wants to if it meets the legal requirement, in this case, for parking, do you still object to the owner converting that hotel room into a condominium?

Steven Kasperbauer: I do, and right now the way I understand, it the hotel is a unit, can I be corrected if that's wrong? Is it considered a unit?

Commissioner Blaz: Correct.

Steven Kasperbauer: So all of those 102 units are a hotel in itself, so I have no objection to them using the hotel units as a unit the way the rights of a hotel can operate, but when you split that into a 102 individual unit owners you have a whole big different complex issue of types of uses and how many uses and how many visitors. Tourist doesn't come down and invite their families to their birthday parties and to this and to that and it creates a lot more usage of the place.

Commissioner Blaz: When the Alupang Beach Condominium was first built wasn't it primarily a condominium, it was not a hotel?

Steven Kasperbauer: If you look at the original, it said hotel and other hotels to run it as flex hotel/condo plan and that's why you have a service elevator on the

back and a storage area and you have restaurants in it and you have marine recreation facility and that's why within less than 9 months after it opened it started as a hotel, so it was specifically designed in the beginning to be in the concept phase but by the time they got down to the very end of it they said, the bubble had already burst in Japan and it was over and they had made sure that they could run that place as a hotel facility, so the penthouse used to be hotels, everything used to be hotels so I agreed with the Replacement HPR because it fits, it works now, it works for the way the building sits on the property and everybody can live with it in the neighborhood somewhat, if you start messing with it, it really affects everybody. (Gave example of military personnel renting each hotel units; number of cars for each units; traffic jam going to work; dangerous intersection on island; commented that it is easier to bring 50 people home in a bus than to send them out in 25 cars.)

Commissioner Blaz: Don't you agree that is true anywhere whether you are in that condominium or in an apartment unit on hotel road.

Steven Kasperbauer: If it becomes all condominium, yes, you are going to have that problem; we don't have that problem right now. In a sense, if it was all hotel, we're starting to have that problem as we see more and more units leased out as condos and I don't know if the hotel units are...what percent is being leased out as condos.

Commissioner Blaz: I don't think I disagree that converting it from a hotel to a condo increases the number of people that are going to be in the unit, I kind of agree with you there, but I am talking about property rights too; it doesn't mean anything that a person who owns a piece property can use it?

Steven Kasperbauer: I agree with you if you are the 100% owner of that property, but that's why we have an HPR because we have come up with the ways to agree as shared owners and it says that we have to all 100% agree.

Commissioner Blaz: I am not sure what is the percentage necessary for that kind of decision to be made, I assume it is not 100% but if its 100% then that is what it takes; if it takes a simple majority then a simple majority would have to be shown that they agreed but you are saying that if the owners agree, you would have no objection?

Steven Kasperbauer: No, I'm saying I object as one of the owners.

Commissioner Blaz: Yes, but you are not the only owner.

Steven Kasperbauer: That's true.

Attorney Brooks pointed out his objection to Steven Kasperbauer characterizing himself as an owner; stated Mr. Kasperbauer is a tenant under a long-term lease.

Steven Kasperbauer: Can I clear this up, because in the Replacement HPR and the HPR, this was cleared up, is we had owned property there and Mrs. Margarita Inocente formerly Governor Ada's mother's sister was a property owner down on the side of Alupang (the old Island Imports) and we traded properties with her and gave it to the park and then took over the long-term lease in that because she keeps the fee simple but in there she had passed all rights, its been recorded, that's how we could build the Alupang Beach Tower; we couldn't do it without it, she gave the rights to her property as the Lessor, first it was under ABC Associates, then it was Ybarri and then it got pass to me to have all rights as an owner, and its recorded and its legal and it was...! object to...

Chairman Lather: Okay. Lets settle this and Terry is going to speak after you speak, but what is your status relative to the Homeowners Association.

Steven Kasperbauer: Could you be clearer on that?

Chairman Lather: What is your status relative to the HPR.

Steven Kasperbauer: I am an Owner, Registered, listed and noted. You will see in here that I'm listed as an Owner with a percentage owner at this time.

Chairman Lather: Are you a unit owner or commercial unit owner?

Steven Kasperbauer: I am a commercial unit, long-term leaseholder with all Rights of Ownership to that unit.

Chairman Lather: Do you own one of those hotel units?

Steven Kasperbauer: No.

Chairman Lather called for any question/public comments, and there was none. Thanked Steven Kasperbauer for his comments which was relevant to the Commission's discussions.

(NO FURTHER PUBLIC COMMENTS.)

Chairman Lather: Terry, this is your opportunity to respond to the public comment.

Attorney Brooks: Thank you very much. This is what I will call a classic example, tail trying to wag the dog. Mr. Kasperbauer came in in 1988 or whenever it was and he got his 138 condominium units and he was perfectly happy to make his money off of those units back then when this was all developed and it seems a little disingenuous and even hypocritical for him to come back now and say, well, Mr. Cho can't have what I have when I developed

this whole thing; I can't believe that he would get up here and even say that. I think that Mr. Blaz was driving right at the point where you have private property, you should be able to do what you want with it, even more...it just boggles my mind that...

Chairman Lather: Here's the part that I'm having a trouble with. First of, I'm totally in agreement with Frank when it comes to property rights, I'm the champion in property rights but I think this is a little different animal here. I find an HPR to be not really related to property rights in the same sense as a property owner does and I'm curious to your legal interpretation as to what are the requirements for allowing all the owners to participate in such a major decision.

Attorney Brooks: Well, all the owners did participate in the original decision to do this, the amendment.

Chairman Lather: I mean, more than participate, approve because I'm not sure that if I'm an owner even though I only own one unit and there's this major move which almost constitutes a new HPR, which it doesn't but its almost, its that significant, I'm not sure that we shouldn't insist that every owner approve of that change.

Attorney Brooks: The law requires you to get approval if you're going to change a unit owner's percentage of ownership, things like that but then the law also talks and this declaration talks about how much of the ownership of entire Homeowner's Association is required to make changes and the highest amount you see anywhere is 75% and well more than 75% of the unit owners have voted in favor of this; more than 90% have voted in favor of it. I think the most telling statement here, Mr. Kasperbauer's statement is he thinks this is affecting the value of his business; I think that's what this thing comes down to that he's not making enough money. This place has operating as a long-term lease facility for some time now, Mr. Cho has basically move this facility away from short-term hotel occupancy or use and is basically renting most of these units to servicemen as Mr. Kasperbauer was afraid of. I mean, that's what happened already because you have long-term leases, you don't have to worry about filling a unit everyday, you don't have to worry about the comings and goings of the tour market and Mr. Cho's made a sound business decision to go towards what the market is going towards and that's a long-term lease situation and that's exactly what he's done.

Chairman Lather: Understood. What's your respond to Mr. Kasperbauer's claim of being an owner and your comment that he's not an owner?

Attorney Brooks: Well he's a tenant; I mean he has a lease.

Chairman Lather: Is he a tenant with ownership rights?

Attorney Brooks: He is a tenant and he has the right to vote the ownership interest of the owner, yes.

Chairman Lather: How is that done in an HPR?

Attorney Brooks: That's a good point and I heard you discussing this with Mr. Torres and I thought that was very interesting when you brought that up and maybe that's something that should be looked at but there was a lot of things.

Chairman Lather: How is it handle in your document, right now? How can a tenant be an owner?

Attorney Brooks: He's not an owner.

Chairman Lather: How can a tenant have ownership rights under your HPR?

Attorney Brooks: I suppose it will be like a proxy, you will treat it like a proxy; he has the right to vote at the meetings; he's 1.6% or whatever the percentage is that's what he can do.

Chairman Lather: That confuses me because normally when you allocate votes under the HPR law on Guam, don't you allocate based on ownership?

Attorney Brooks: Well, Mrs. Inocente owns that commercial unit so there is an owner of that unit with an ownership so he votes that ownership interest.

Chairman Lather: You lost me now; I'm confused.

Attorney Brooks: Again, you will have to ask Mr. Kasperbauer because he was involved in the original HPR which allowed that; I think Mr. Cho would like to say a few words.

Mr. Cho: Mr. Kasperbauer mentioned about the parking situation that there's a lot of parking problems. There is because one, we already ceased the hotel operation and we rented those 102 units long-term base. As he said, it's not about how percentage of the units are using for the long-term base verses short-time base, but 95% of the 102 units is already leased out for the long-term base for the local people, local business people or military as well. We don't see any parking problems; they have birthdays, parties and everything but we don't see any parking problems, only one we have a parking problem is ABC; Mr. Kasperbauer's vendors and their customers coming to the side because they're lack of parking space and they park everywhere and the tenants are complaining against that; except those problems we don't see any parking problems at all.

Commissioner Blaz: Do you have an assign parking for ABC?

Mr. Cho: Yes, ABC has assigned parking, 11 parking but they're for employees but their customers coming to the side and parking everywhere; every tenant know where their parking is so they are parking their cars at the parking space but their customers doesn't know; seems like they don't have any control...on purpose or not on purpose, I don't know but they allow their customers to park everywhere and from time to time have conflict with tenants and homeowners. Also, he said that 36 units condominium including all...from the beginning to now there was no hotel unit but condominium; just a condominium, that's including all penthouses. He says, penthouse is hotel but that never been hotel before; used as originally condominium and still now condominium.

Chairman Lather noted that there are only four (4) Commissioners present; it takes four (4) votes for any action and the action has to be unanimous; gave Attorney Brooks two options: 1) proceed to vote on the application; 2) place the application back on the agenda for a secondary review and provide a new document based on the discussion on the numbers and the elimination of future phases; recommended that the Cho group and ABC club (Steven Kasperbauer) work together; expressed concerns about major changes being made without the consent of some of the unit owners.

Attorney Brooks: I don't see how going back to the development that Mr. Kasperbauer himself was closely involved in creating at the very start, now all of a sudden he's so against is all that big a change.

Chairman Lather: I see your point there.

Attorney Brooks: Again, it seems hypercritical, he's got his 138 units and now he's going to go back and complain that somebody else should not get the same thing that he got.

Chairman Lather: And maybe his opposition is groundless; I mean it's possible, I haven't really reviewed this so I'm looking at it fresh, but right now it's troublesome but more importantly I think is the fact that it's difficult for you to get four (4) votes on a document that we're really sure since the target is moved a little bit even from the excellent work that you've done, and again I want to commend you for doing this but I think we're going to have a hard time taking action today, so I'm going to take your lead on procedure here but my inclination now is that we set this again for our next meeting September 25th (a month) at which time in the interim to get a new whatever we're going to call this now, Replacement Supplemental Final Preliminary HPR and what I like to see in that document is the 138, how you're going to address the 6-units into a commercial unit; the elimination of future phases and we're going to need some clarification I think, I'm not sure what that is about the ownership rights of some of your tenants, I mean I'm really confused by that at this point and maybe I'm wrongly confused, may be I shouldn't be.

Attorney Brooks: Well, we think we are. The last time we got Mr. Kasperbauer on board it took hundreds of thousands of dollars to do it, so I don't think we want to go down that road again.

Chairman Lather: Understood, and you shouldn't be force to and the Commission is not going to force you to; I'm just saying that it would be nice if there was a clear explanation and resolution of all the conflicting points so we could all feel good about moving forward on this project. It may not happen, that's happened in the past.

Attorney Brooks: We don't see it happening with Mr. Kasperbauer, unfortunately, it's a situation where he's got his business interest and he's going to look out what's best for his business interest. We ask that the Commission consider modifying the 102 units at this point and we would make the modifications to the documents to conform with the Commission's...I think what we discussed pretty much what we would do already which is basically change the other ones into commercial units that would be use for storage and not have any impact at this point. All that we could do is reduce the parking, you're basically taking 10% of the place and making it vacant so there is no burden, you've reduced the burden on everything by 10% at least.

Chairman Lather: But there's other things in there that needs to be address like the statement about commercial unit one needs no approval.

Attorney Brooks: We would take that out obviously.

Chairman Lather: We have to go through the whole document and some details. Frank, you got a comment? (None.) Before the Commission decides on its action, what is your preference here? I'll let you tell us what you like to see happen in a perfect world just to prove it.

Attorney Brooks: We would like to see the Commission approve the modification of the 102 units back into condominium units.

Chairman Lather: Understood. I guess my question was too easy for you. How do you expect us to do that today given the state of documents that we have?

Attorney Brooks: As you did with Mr. Torres, you went through and made some modifications.

Chairman Lather: But those are basically technical modifications, yours are really substance and this really changes the look of this whole declaration. I don't think we have a choice, I guess I'll just cut to it; I think we need to put you back on the agenda on Sept. 25. You want to register an objection to that now, we'll hear you on that. What do you guys think?

Commissioner Salomes: Mr. Chairman, I'm trying to look at the whole scenario from 1984 to present, and since that time the development or hotel/condominium whatever it is underwent some kind of metamorphoses and it was based on business executives. Now they have a new owner and he wanted also to do some changes; during that time changes were made, 6-units where put into the building without any recommendations and nobody complained. Now we have changes that they are pursuing on a legal basis with proper documentation; I can't see the logic because it's based also on their percentage of ownership and relative to the size of the property. They own a large percentage of ownership so I wanted to know how we are going to balance the small percentage of ownership against the big percentage of ownership relative to the legal changes that they wanted to make.

Chairman Lather: The AG's not here but my read of this is that under the statutes and the existing documents, the governing documents in this case, I believe what Mr. Brooks is saying is correct; I think they've met the legal obligation as far as their procedure. I'm not sure about that but it appears to me, we have to look at the minutes of the meeting and make sure that the Homeowner's meeting was done appropriately but from a policy standpoint, I think its bad policy, but legally I think it will stand muster. Frank, you had a question?

Commissioner Blaz: They presented evidence of those actions taken by the Association and documents filed with this.

Chairman Lather: Any other comments? (None.) Commissioners, its in your hands.

Commissioner Blaz: Mr. Chairman, why don't I make a motion and we'll make a decision. I move that we approve the reversion of 102 hotel rooms to 102 single-family condominium units which combine with the 36 existing family units, totaling to 138 single-family condominium with 257 parking units in a "C" zone proposed by the Alupang Beach Towers Association under Application No. 1992-39B. I like to add, any plans to increase the number of single-family condominium units or add hotel rooms or decrease the number of parking stalls in the future will require a variance and prior approval of the Guam Land Use Commission; that is my motion Mr. Chairman.

(Discussion amongst the Commissioners and Chairman Lather on the motion followed.)

Chairman Lather: There's a motion on the floor to revert the project back to its original, which is a pre-hotel configuration, is there a second to the motion?

Commissioner Salomes: Mr. Chairman, before I second it, the word "reversion" does that mean the former document or is it the revision?

Chairman Lather: That's the part that we haven't figured out.

Commissioner Salomes: I think the key word is reversion and we need to make part of our decision better to use the current document or the prior document, which is the original.

Chairman Lather: Right, and neither one works right now. Anyway, is there a second to the motion?

Commissioner Salomes: Second.

(Brief discussion amongst the Commissioners and Chairman Lather on the original request/reversion followed.)

Chairman Lather: I'm in agreement with the reversion, I like the principal with what you're saying Frank and I would vote in favor of a reversion back to the original 138 condominium units. I think that's appropriate and I think there's a way Mr. Kasperbauer can be happy and it can all work out if we don't make any changes, just go back to what it was before but I can't do it today because I don't have the documents to do it today, that's my problem and we can't take action and this is a technical issue and again, I support the concept but as Chairman I have to tell you that I can't vote for an action that's so vague as this; we need to take a specific action based upon a document. The last case we heard was rather simple and it was just some minor things that we all agreed to and we could make those changes in the motion. In this one, it's too complicated, it basically requires a new document and I just can't see a way to pass a motion even though I agree with the concept.

Commissioner Blaz: I'll withdraw the motion Mr. Chairman.

Chairman Lather called for another motion, if any, and there was none.

(Upon discussion between Chairman Lather and Attorney Brooks, it was agreed to place the application back on the agenda for Sept. 25th meeting; submit document reverting back to 138-units, eliminate the other 6-units and future developments.)

(Item A., Alupang Beach Tower Homeowner's Association to be continued on the next GLUC hearing Sept. 25, 2008.)

(Chairman Lather called for a recess at 4:30 p.m. and reconvened at 4:35 p.m.)

GUAM LAND USE COMMISSION



Chairperson Jay L. Lather Vice-Chairperson - Vacant Commissioner At Salomes Commissioner Lawrence S. Rivera

Commissioner Peter E. Gill Commissioner Frank G. Blaz Commissioner Conchita Bathan

Terezo R. Mortera, Executive Secretary
Patrick Mason, Counsel, Deputy Attorney General

AGENDA

October 9, 2008, 1:30 P.M.

Department of Land Management Conference Room 590 S. Marine Corps Dr., Third Floor, ITC Building, Tamuning

I. Notation of Attendance: [X] Quorum 1:37pm [] No Quorum (Present: Chairman Jay Lather; Commissioners Frank Blaz; Conchita Bathan; Larry Rivera & Peter Gill)

II. Reading and Approval of Minutes:

GLUC Regular Meeting for September 25, 2008 (Dispensed until the next meeting.)

III. Unfinished Business.

HORIZONTAL PROPERTY REGIME

A. The Applicant, Alupang Beach Tower Homeowner's Association, represented by Atty. Terrence Brooks, Esq., is requesting issuance of a First Supplementary Final Public Report for one (1), twelve (12) storey building containing one-hundred and two (102) converted hotel units to residential units, thirty-six (36) existing residential units, two-hundred fifty-seven (257) parking stalls and other common elements on Lot 2015-1-REM-NEW-2 and Lot 131 Rev Unit 1, in the Municipality of Tamuning, in an "C" (Commercial) zone, HPR Registration No. 92, under Application No. 1992-39B. [GLUC Mtg. 8/14/08 – Continuation; GLUC Mtg. 8/28/08 - Continuation) Case Planner: Carl Untalan (Withdrawn from GLUC Agenda)

ZONE CHANGE

- B. The Applicant, Nami Chang, represented by E.M. Chen & Associates, request for a Zone Change from "A" (Rural) to "R-2" (Multi-Family Dwelling) zone for a proposed two-storey apartment building, on Lot 10064-N-1-1, in the Municipality of Dededo, under Application No. 2008-63. [GLUC Mtg. 9/25/08 Continuation for GLUC Mtg. 10/9/08] Case Planner: Marvin Aguilar (APPROVED; applicant need to revise justification language before Chairman signs NOA; Unanimous)
- C. The Applicant, Maximino Mercado, represented by Jose Morcilla, requests for a Zone Change from "A" (Rural) to "C" (Commercial) zone to construct and operate a commercial building facility on Lot 68, Tract 1536, Municipality of Mangilao, under Application No. 2008-64. [GLUC Mtg. 9/25/08 Continuation for GLUC Mtg. 10/9/08] Case Planner: Marvin Aguilar (DISAPPROVED; Unanimous)

ZONE CHANGE AMENDMENT - TENTATIVE SUBDIVISION

D. The Applicant, Guam Five Star Corporation, represented by Joe Morcilla, request for a Zone Change Amendment to amend an existing planned unit development of mix uses (Validemossa Estate); and a Tentative Subdivision for a proposed 117 single family units, on Lots 7135-3-4, 7135-3-5 & 7135-3-6, Municipality of Dededo, in a "PUD" (Planned Unit Development) zone, under Application No. 2007-53A/B. [GLUC Mtg. 9/25/08 - Continuation for GLUC Mtg. 10/9/08] Case Planner: Penmer Gulac

(To be placed back on agenda when Applicant provides CCR, Bylaws and Master Plan.)

Page 2 GLUC Agenda 10/9/08

IV. New Business:

ZONE CHANGE & TENTATIVE SUBDIVISION

- E. The Applicant, Blair Construction Co., Inc., represented by FC Benavente, requests for a Zone Change from "PD" (Planned Development) to "R-1" (Single Family Dwelling) zone and a Tentative Subdivision to allow construction of 86 single family residential units with full infrastructure and recreation amenities, on Lot 7134, in the Municipality of Yigo, under Application No. 2008-70A & B. Case Planner: Carl Untalan (APPROVED Zone Change, 2008-70A; Unanimous. Tentative Subdivision 2008-70B rescheduled to 11/06/08 meeting; Applicant needs to provide subdivision map.)
- V. Administrative Matters.
- VI. Adjournment, 3:45 p.m.

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GUAM LAND USE COMMISSION MEETING MINUTES



Department of Land Management Conference Room, ITC Building, Tamuning



October 9, 2008 1:37 P.M. – 3:45 P.M.

GUAM LAND USE COMMISSION (REGULAR MEETING) October 9, 2008, THURSDAY 1:37 P.M. – 3:45 P.M.

Department of Land Management ITC Building, Tamuning

MEMBERS PRESENT:

Mr. Jay L. Lather, Chairman

Ms. Conchita Bathan, Commissioner

Mr. Frank Blaz, Commissioner

Mr. Peter Gill, Commissioner

Mr. Lawrence S. Rivera, Commissioner

Mr. Terezo R. Mortera, Executive Secretary

Mr. Steven Newman, Assistant Attorney General

`Guam Land Use Commission Meeting Minutes Department of Land Management Conference Room, ITC Bldg., Tamuning October 9, 2008, 1:37 P.M. to 3:45 P.M.

I. Notation of Attendance

Chairman Jay Lather called the meeting to order at 1:37 p.m. Present were Commissioners Frank Blaz, Lawrence Rivera, Peter Gill and Conchita Bathan. Also present, Carlos R. Untalan, Acting Chief Planner, DLM.

II. <u>Approval of Minutes</u>: GLUC Regular Meeting of September 25, 2008

Chairman Lather announced that the minutes of September 25, 2008 were not received on time for the Commissioners review; the minutes will be entertained at the next GLUC Regular meeting.

(Approval of Minutes of September 25, 2008 to be entertained at the next GLUC Regular Meeting)

III. <u>Unfinished Business</u>:

HORIZONTAL PROPERTY REGIME

A. The Applicant, Alupang Beach Tower Homeowner's Association, represented by Atty. Terrence Brooks, Esq., is requesting issuance of a First Supplementary Final Public Report for one (1), twelve (12) storey building containing one-hundred and two (102) converted hotel units to residential units, thirty-six (36) existing residential units, two-hundred fifty-seven (257) parking stalls and other common elements on Lot 2015-1-REM-NEW-2 and Lot 131 Rev Unit 1, in the Municipality of Tamuning, in an "C" (Commercial) zone, HPR Registration No. 92, under Application No. 1992-39B. [GLUC Mtg. 8/14/08 – Continuation; GLUC Mtg. 8/28/08 - Continuation) Case Planner: Carl Untalan

Chairman Lather: Our first item is an Unfinished Business, Alupang Beach Towers. I will first remind the Commissioners that pursuant to our policy and our announcements, the Commission did hold a public/technical session last Friday to review this with the Attorneys, to try to go through the legal arguments prior to the meeting, and members of the public was present as well as the Applicant on Friday and as a result of that we found some serious problem with the application with the Attorneys and so I received a letter, and this is not today because our policy is not to entertain it today but this came in 3 or 4 days ago as result of our meeting from the President of the Homeowners Association: "This is to confirm that the Board of Director's of Alupang Beach Tower Homeowners Association desires to postpone the Commission's hearing on this project which is currently

scheduled for today", so this is taken off the agenda. They are going to review this with their Attorneys and try to figure out some more things and come back to us; they have a lot to figure out for those who sat here. I know Conchita and Frank were here, they have some serious issues in the whole proposal so it is going to take some reworking; they are just not ready to be on the agenda.

(Item A: HPR (Alupang Beach Tower Homeowner's Association) withdrawn from the agenda, per Board of Director's of Alupang Beach Tower Homeowners Association until further notice.)

ZONE CHANGE

B. The Applicant, Nami Chang, represented by E.M. Chen & Associates, request for a Zone Change from "A" (Rural) to "R-2" (Multi-Family Dwelling) zone for a proposed two-storey apartment building, on Lot 10064-N-1-1, in the Municipality of Dededo, under Application No. 2008-63. [GLUC Mtg. 9/25/08 – Continuation for GLUC Mtg. 10/9/08] Case Planner: Marvin Aguilar

(Representative(s)/Speaker(s): Edith Pangelinan; Endy Chen, E.M. Chen & Associates)

Chairman Lather gave a brief summary of what transpired at the last hearing of September 25, 2008; referred to documents received dated Oct. 9, 2008 from the applicant on public necessity, convenience and general welfare; narrative; colored map; Chairman Lather deferred to Acting Chief Planner, Carlos Untalan.

(See Exhibit "A", dated October 9, 2008 from Endymion M. Chen, President; E.M. Chen & Associates to Jay L. Lather, Chairman, Guam Land Use Commission)

Carlos Untalan: I wasn't here on the previous meeting, but it was my understanding that the application was heard, so to speak, and it was continued for this hearing with the submission of those documents that you have just mentioned. Thus far, since that time from the last meeting leading up to the current meeting, I've been working with the applicant in submission of the documents which now you have before you.

Chairman Lather: Before we hear from the applicant, any question for staff?

Commissioner Blaz: When did you receive this document?

Carlos Untalan: The actual document that we finalized was either late yesterday and I instructed them to finalize it and they made it for today's hearing.

Commissioner Blaz: We just received it today. I came here yesterday hoping to pickup some of these documents so I can read it before this hearing and none of these documents were available as of yesterday and I just wanted to find out whether these documents were submitted earlier.

GUAM LAND USE COMMISSION



Chairman Jay L. Lather Vice-Chairman Lawrence S. Rivera Commissioner Conchita Bathan Commissioner Roland Certeza

Commissioner Andrew Park
Commissioner Beatrice P. Limitaco
Commissioner - Vacant

Monte Mafnas, Executive Secretary Vacant, Assistant Attorney General

AGENDA

Regular Meeting

Thursday, June 28, 2012, 1:30 p.m.

Department of Land Management Conference Room 590 S. Marine Corps Dr., 3rd Floor, ITC Building, Tamuning

l. Notation	ı of	Attendance
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[] Quorum

] No Quorum

- II. Reading and Approval of Minutes
 - GLUC Regular Meeting of June 14, 2012
- III. Old or Unfinished Business

Horizontal Property Regime

A. The Applicant, Alupang Beach Tower Condominiums represented by Atty. Terrence M. Brooks, P.C.; request to amend its existing HPR, Lot 2015-1-REM-NEW-2 and Lot 131 Rev Unit 1, in a "C" (Commercial) zone, in the Municipality of Tamuning, HPR Registration No. 92, under Application No. 1992-39B. (Continuation from GLUC Meeting of 8/28/2008)

IV. New Business

Conditional Use

B. The Applicants, Chang Ki and Otilia F. Bang represented by Richard Rosario; request for Conditional Use permit to operate a retail (Mom & Pop) store on the 1st floor within an existing two-storey duplex and 2nd floor to be used as the applicants' residence, on Lot 3-4, Tract 1033, in an "A" (Agricultural) zone, in the Municipality of Dededo, under Application No. 2010-15C.

Case Planner: Penmer Gulac

Zone Change

C. The Applicant, Base Corporation represented by Ignacio Santos; request for a Zone Change from "A" (Rural) to "M-1" (Light Industrial) zone; to construct a warehouse facility to be used primarily for storage of construction materials on Lot No. 7030-NEW-1NEW-1NEW, in the Municipality of Yigo, under Application No. 2011-25.

Case Planner: Celine C. Aguilar

Zone Variance

D. The Applicant, University of Guam (Center for Island Sustainability) represented by FC Benavente, Planners; request for a Zone Variance for Height to install two (2) wind turbine towers, one at 70 feet and the second at 100 feet in height on Lot 5376 NEW-3, in an "R1" (Single Family Dwelling) in the Municipality of Mangilao; under Application No. 2012-21.

Case Planner: Penmer Gulac

- V. Miscellaneous Matters
- VI. Adjournment

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IMPORTANT NOTICE - READ CAREFULLY

"Pursuant to Section 5 of Executive Order 96-26, the applicant must apply for and receive a building or grading permit for the approved GLUC/GSPC project within one (1) year of the date of Recordation of this Notice of Action, otherwise, the approval of the project as granted by the Commission shall expire. This requirement shall not apply for application for Zone Change***."

GUAM LAND USE COMMISSION

Department of Land Management Government of Guam P.O. Box 2950 Hagatña, Guam 96932

ORIGINAL

NOTICE OF ACTION

July 16, 2012

To: Alupang Beach Tower Condominiums Represented by Attorney Terrence M. Brooks Tamuning, Guam

Application No. 1992-39B

The Guam Land Use Commission, at its regular meetings on June 28, 2012, and July 12, 2012 _XX_/ Approved Disapproved Tabled Your request to amend its existing Supplementary Final Public Report, Lot #2015-1-REM-

NEW-2 and Lot 131 Rev Unit 1 in a "C" (Commercial) zone in the Municipality of Tamuning, including the amended declaration, HOA by-laws and supporting documents, under Application No. 1992-39B, HPR Registration #152.

<u>Chairman Lather (cont'd)</u> would say without question that this would need a density variance. And that's the way it might end up and everybody's on notice for that.

All in favor of the motion as stated signify by saying "aye" [Chairman Lather, Vice Chair Rivera, Commissioners Limtiaco, Park and Bathan] and those oppose say "nay."

(Motion passes unanimously; 5 - ayes, 0 - nay)

Chairman Lather Terry, is this your final document and I just have to review?

Terrance Brooks basically yes and the only change is the construction contract has increased in the amount.

<u>Chairman Lather</u> I'll get on this and Cris put this back on the agenda for a technical review of documentation only and make sure it is limited to that.

Hope it all works out, thank you all for being here. Moving on to the next item ---

IV. New Business

Conditional Use

B. The Applicants, Chang Ki and Otilia F. Bang represented by Richard Rosario; request for Conditional Use permit to operate a retail store (Mom & Pop) on the 1st floor within an existing two-storey duplex and the 2nd floor to be used as the applicants' residence, on Lot 3-4, Tract 1033 in the Municipality of Dededo, under Application No. 2010-15C. Case Planner: Penmer Gulac

<u>Chairman Lather</u> Richard, I appreciate you stepping in on that last application and giving your opinion. I know it wasn't required and we appreciate that.

<u>Penmer Gulac</u> summarized the staff report to include the purpose, facts, staff analysis, discussion, public hearing results and recommendation.

(Attachment B - Staff Report dated June 22, 2012)

Chairman Lather questions for staff? (None noted)

Richard Rosario (with Mr. Chang Bang) the property is located in Dededo and owned by Mr. and Mrs. Bang.

The Certificate of Title was recorded and we are requesting for a conditional use for a mom and pop store and it is zoned agricultural. The lot area is 1870 square meters and the land use is an existing two-storey duplex with four bedrooms, two baths, kitchen, dining and family room having a floor area of 1,800 square feet for each unit.

The proposed first floor will be converted into a small retail store with shelves for groceries, freezers, coolers and storage areas having an area of 2858 square feet. The second floor will be 1,800 square feet and will remain as Mr. and Mrs. Bang's residence.

The water, we have fire hydrant and is fronting the property which is the Chando Street and the applicant is reapplying for a commercial meter. The waste water; there is a septic tank, leaching field plus a holding tank for the waste. There is french drain for the run-off and provided in front

Commissioner Bathan the only concern that I had here is that we would be mis-interpreted that we are taking the 400 square foot dwelling unit for commercial zone on a multi-family. We made it clear that it is not our intention to interpret that way and the application is just to convert a portion of the commercial to R2 and apply the 1,250 square foot per unit and I think I can live with that.

Commissioner Limtiaco I'm still not there whether or not they should come in for a density variance. Otherwise, I agree with what everyone said that they should be able to move forward. I would happily put the issue of density variance to bed if we convert the commercial based on the 1,250 square feet and that's the only sticking point that I have.

Chairman Lather I agree there's a risk there.

Commission Limitaco does the Chief Planner agree with staff? What is your take on this? Under the HPR, under Chapter 45 in consideration that multi-family have minimum of 1,250 square feet...if we're just looking at the first floor for commercial, can we take the application as is and allow the conversion of that to be 20 units?

<u>Marvin Aguilar</u> my interpretation of this is the HPR of course bases itself on what the Zoning Law provides. And so the problem I have with this project all together is that we've met all the requirements to some extent. We can run in circles talking about density and density but the reality is the structure exists. There will be no, at least we anticipate that there will be no issues or arguments over who owns what parking or is parking available.

Commissioner Limtiaco I don't have any of those issues.

Marvin Aguilar so, my answer would be yes.

Joe Santos whatever the Commission does, I'm just being say beware.

<u>Chairman Lather</u> good points, I mean you made good points. Anything further (none noted). If we pass this motion, we're allowing the project to proceed subject to technical review of the documents and sales which we will put back on the agenda, but we won't hear the entire thing. It will just be a technical review of the documentation and we'll do that at the following meeting.

Any questions about any of the procedures? (None) Terry, are you okay with that process?

Terrance Brooks yes sir.

Monte Mafnas I quote the sentiments of the Chief Planner. We're not really increasing the building foot print, the building is set. And sympathize and empathize with the developer because the commercial space is not the highest in best use at this point in time as it was back in 1988. Ladera does not have a retail space that I know of because I've been there inside and out. This is a unique situation. As Mr. Swavely stated, time changes everything and maybe it's a time to move forward and revisit and amend and I just wanted to state that.

Chairman Lather I am convinced personally that this would normally require a zone variance; I think that's ultimately the way it should go, but I also think there's enough obfuscation in the record and problems in the manner in which the old TPC granted the density variance in 1988 that I'm okay in proceeding under a special circumstance. But under any other circumstances I

Chairman Lather you want to pursue a variance?

<u>Dan Swavely</u> no excuse me, we don't want to pursue the variance, we want to pursue the change.

Vice Chair Rivera you have 130 sum units; is 20 units a must, life or death?

<u>Dan Swavely</u> here's the issue; the commercial unit is the first thing you see when you come in there is the lobby; it's dead, and that's where Esmeralda was and it's important as much where is it is location Mr. Vice Chair as it is for its use.

Vice Chair Rivera will there be commercial activity in your condos. Will there be restaurants?

Dan Swavely yes there will be but no restaurants. The Agana Beach Resort is at the back.

Chairman Lather what is the 2,000 square feet of commercial?

Terrance Brooks Alupang Beach Club

Dan Swavely Alupang Beach Club has a small office on the second floor.

<u>Chairman Lather</u> anything further (none). We'll close that and go back to the Commission's action. Is there a second for the motion? Moved and seconded by <u>Commissioner Limitaco</u>. We have a motion on the floor and I want to thank Mr. Park for the suggestion and it was an excellent suggestion.

I want to be very clear in what I said. We understand that the old TPC apparently applied the 400 square feet commercial density calculation when they granted this density variance in 1988; however, let there be no doubt that the Commission does not accept the 400 square foot calculation for multi-family and we do not desire to set precedence by this action even though we might, but it's not our intention. Our intention is to modify an existing HPR and not change allowed total density for the entire project. Take the commercial and convert over by the 1,250 matrix and get to a less than allowed, 22 is allowed in there, we're going to go less than that under HPR modification. I think in doing this we can get this project moving again and contribute back to the economy of Guam. There's a lot of logic in the process, but I really don't want to do anything that violates either procedures or law, and I think this one might just work. I'm willing to take a chance. Tricee ---

Commissioner Limitaco no comments right now.

<u>Vice Chair Rivera</u> I'm glad you indicated that the part where we are saying that is not for but this and using 1,250 for the record and I feel comfortable with that. I just want the building to be occupied, I want it to happen. It's sad that it sat there for awhile and all due respect for the new owner.

Commissioner Park my comment is same as I mentioned before. I think we have to consider that the 138 units have been approved by the previous Commission and we do not want to touch it. I just want to deal with the remaining portion of the space. Even if we approve, there will be no violation by our action.

Joe Santos (cont'd) Ladera does the conversion and say you've allowed this on this and they already sought a variance. We'll support you on whatever you decide.

<u>Commission Limitaco</u> let me go back again to the NOA of 1990. There was a conditional use as part of the NOA and there was a notation says that it was approved for 138 units and commercial and retail spaces. So Joe we're not eliminating a 100 percent of the commercial space.

<u>Joe Santos</u> yes, but you are reducing the number of space. Anyways that notation and if you look at all the notices of action at that time, a notation is what the applicant came in for. This is why we re-modified the Notice of Action to say that this is the application so there's no confusion on what was said. That is exactly what the application came in for and below is what the Commission approved.

Commissioner Limtiaco I understand that, I understand what you're saying. The point that I'm making is that it was still approved with "x" amount of units for density and however they come up with the number they came up with the number. The commercial retail spaces are on the bottom floor was commercial and retail spaces. If we are going to take today's statues on the application that we have, we're looking at the bottom floor of commercial spaces and we're applying the 1,250 for multi-family, can we use that? Do we have to have a variance? We already have a variance.

<u>Joe Santos</u> because it's a variance over the variance. The standard was 66 or now you're turning around and hanging on the 138 which is the over density variance and now you're adding another thing over the 138. You're going to 158 almost 22 units, 160 units. You're adding the multi-family to a 160 units now and you're over density that portion. You're going again over density from what wasn't requested.

<u>Dan Swavely</u> Mr. Chairman, I'm hearing things that I don't agree with. I would like to rebut if the Commission will open this up to dialogue again because this wasn't brought up.

I think the variance upon a variance upon a variance is frankly starting to sound a bit obstructionist to me. I'd like to see things in writing. I think you're recommendation is sound and defendable. I think it completely falls within the HPR and this Commission's authority over HPRs. HPRs are altered by this Commission in the past in one manner or another and this is such an example and I just don't see how this would fall into a variance in the Zoning Code. It's an HPR; it's not somebody's building that's not governed by an HPR.

Chairman Lather that's the way I'm looking at it, but I think Joe has a very good point to make. One thing that you need to be aware is that you being the applicant here that if we take this action, and I think what Joe is suggesting here is that you run a risk of litigation by disenchanted owners within your property or even affected people outside. So, we're trying to find as we always do a compromise that makes sense for all the parties and move forward in an appropriate manner. I'm willing to take a chance but in so doing you should be aware by accepting this you might be setting yourself up for litigation as well which might delay your project even further. And you might want to go the route of a variance and make this clean.

<u>Dan Swavely</u> we've discussed that and we know the risk and burden of it all. We discussed it and decided before this hearing started in fact that we would like to pursue the variance at this point. And if something falls out of that we will have to deal with it at that point.

<u>Chairman Lather (cont'd)</u> again what I'm saying here is that we're not allowing a 400 square foot interpretation. That is not the way it's done, but that's okay they can still meet their density using the 1,250 area.

- 3) The applicant is allowed to take the remaining approximately 2,000 of commercial area and continue on as commercial use.
- 4) The supplemental HPR shall be subject to a secondary review by the Guam Land Use Commission and subsequent approval and separate from this approval.

So what we're doing today is we're giving you approval for the supplementary HPR with all the density units, but now we're going to have to back and look at the technical writing of the HPR to ensure it conforms. So we'll put the document language back on the agenda but not the approval. I have to admit that we haven't had time to look at it because we focused on the density.

First of all staff, do you have any objections to what I've said so far?

Joe Santos everything is good, but the only thing is that you've already given a variance, you're accepting a variance ... you're adding an additional 22 for a variance over that 138. It's actually a variance not under the HPR but under the authority of Chapter 61 and there's going to have problems in that arena.

Chairman Lather why should we?

<u>Joe Santos</u> because it's a zone variance and it requires a findings-of-fact and requires a review of the ARC also.

<u>Chairman Lather</u> is it a zone variance to convert commercial to residential as long as the total units remains within the total allowed in their original density variance.

Joe Santos you're ratifying the 138 that's fine. Because you're taking and saying that's what you actually meant that's okay. It's the additional that is going to be a problem and need to be concerned about because the Executive Order and even the Zoning Law requires a review of that. You're taking the 138 and adding on the additional density variance to that piece of property.

Chairman Lather are we really adding too?

Joe Santos you are. Because again they are going 138 and it's the commercial. They're converting it to multi-family residential. You're not counting the residential, you're counting in the multi-family and there you're taking that and that requires a zone variance. I'm just saying that you need to be careful with that because you need to do a findings-of-fact on that.

<u>Chairman Lather</u> I hear you. It's an interesting question and I don't know what the answer is. But I am willing to take a chance on it that it doesn't require another variance and we can do a conversion in the existing structure and take the commercial and apply the 1,250.

Joe Santos sir, that's kind of a slippery slope you're going down. What if other people come in and say the same thing and say I want to convert and they do conversion like Alupang Towers,

<u>Vice Chair Rivera (cont'd)</u> no actual Minutes or correct Minutes, I think knowing what is required and what's in the law and for us to interpret and say yes it should be 400 might bite us ... notwithstanding that already the planner has indicated that it should be this. But on the other side, I agree with Mr. Park that we want to see this happen, we want to see it occupied. I want this to move forward but in the correct way.

Commissioner Bathan I share the opinion of the Vice Chair and I really want to get a legal opinion on this because I don't want the next applicant to come here and say I have a "C" zone and I'm allowed by regulation to use 400 square foot for each dwelling and we can't say anything because we approved this and we're not sure if we are legally correct in doing this. Although based on their explanation they're allowed because of the C-zone. But based on the use, I believe there's a conflict on the square footage that is allowed and I would really like to see the development protected.

Commissioner Limitaco regarding however they calculated the density in the past, I think the NOA is our guiding document at this point and the Minutes. So if the NOA and the Minutes is read just plain on its face approved for 138; I can only speak for myself and I can't justify at this point unless we have legal opinion.

<u>Chairman Lather</u> all good arguments. I'm going to put a motion on the table, and it's going to be a very complicated one and so as I talk I will keep amending it.

Move to approve the application for supplementary HPR subject to:

 The Land Use Commission acknowledges there is a problem in the calculation of the original number of units on this project and there were various interpretations. So by this action, we will ratify the action of the Land Use Commission in the 1990 NOA for a 138 residential units and 29,699 square feet of commercial units. (Corrected to 27,699) (STOP)

So what I'm doing here is that we're going to set the bar at 138 plus 27,699 commercial. So that number is no longer in question as to how that calculation was achieved.

The rational for that is that in 2005, the Guam Land Use Commission re-entertained this project and issued a supplemental/replacement HPR that again quoted the 138 units; and therefore, by prior action the GLUC has adopted the 138 number in its official proceedings.

2) The 29,699 square feet of commercial space under the revised supplemental HPR shall be allowed to be converted to be residential space based upon the calculation of 1,250 one dwelling unit per square feet. Which is the correct the way to interpret the statute. (STOP)

Therefore what we're saying is that they'd be allowed 22 units residential units in the commercial. Actually 27,699 they are reducing it. (Go back and change that I had the wrong number it's 27,699 they're taking out 2,000) and if you divide that by 1,250 you get 22. The applicant is only seeking to convert the commercial to 20 spaces which is two less than the allowed under the statue.

<u>Dan Swavely</u> in this case Mr. Chairman, the law does not address that the law says 400 square feet under commercial. So my point is you should have a resolution to correct this part of the law just like you corrected the other part of the temporary workers housing law until the law was changed.

<u>Chairman Lather</u> staff is saying that the correction is not necessary because that interpretation was never applied.

Hee Cho I don't believe that because there are a lot of cases in Guam for sure. Other condominiums on Tumon Bay have never applied for the one that I'm trying to take care of.

Chairman Lather no, that's an H-zone Mr. Cho, it's a different zone; they get 400 for an H-zone.

<u>Dan Swavely</u> i see what the staff is saying never and I want to listen to staff too and I do obviously. I don't think "never" is I don't think that the Commission should just take that at fixed value. I think it can be, I've shown you the number and literally you read it. You can say 400 square feet and that's what I'm asking you to do. And then if you don't want that to happen again make one of your resolutions and say from now on commercial 400 square feet only applies to commercial uses.

Commission Limitaco I think that commercial zoning portion of this table in 61501; I think what dictates the density is the use. If we were under a commercial and in the commercial zone there are conditional uses and it depends on the use. That's my interpretation of how I would do this.

Chairman Lather that's logical because you can't have a 400 square foot house in residential.

<u>Dan Swavely</u> even in an R2 when it says 1,250 square feet it doesn't say you have to have a 1,250 square foot house it just gives you a yardstick. And that 400 square foot yardstick gives a number in the 250's and okay there's a yardstick, but we're still just asking for 158.

<u>Chairman Lather</u> anything further (none noted). Public Comment (seeing none, public comments were closed). Commissioners, how would you like to proceed?

Commissioner Park considering the trends and today's economy, as a whole I like this project. I would like to find a way to approve it. Not taking into consideration the law and regulations and the applicable sections of the law; but in general, I want to approve this project because I think this project will benefit the economy of Guam even for an additional 10 units. As Mr. Swavely explained, the 138 units came from 102 units plus 36 units, and this one carried on and the remaining commercial area. The commercial area is approximately 27,000 square feet and if I divide by 1,250 square feet it came out to 22 units. If we don't go back to the past and just accept what had happened and if we are talking about the remaining space of the area, we might be able to approve it. I don't know whether I am right or wrong, but that is my opinion.

<u>Vice Chair Rivera</u> in all fairness to the new landowner, I know that Alupang has been idle for awhile. I myself would like to see this move forward; however, I would really want to, before I vote, I want the issue with 400 or 1,250 square foot numbers to be resolved. It has to either be this number or the other number and then we can say that if this is the case then we can say this is all we can approve. I can share what Joe (Santos) indicated that if we go to court that we are protected and we did the right thing. Whatever happened in the past notwithstanding there's

<u>Joe Santos (cont'd)</u> or approve before they could approve their HPR then the Commission is protected. That's really one of the things that staff says, make sure we protect this Commission.

<u>Dan Swavely</u> that's all good, but the point remands that there is an interpretation whereby 400 can be applied and go into 138 to 158; this is a lot less than the 400 applied through the whole thing, a lot less. We cap it at that that's absolutely fine. But I believe there's a route available for this Commission to approve.

Chairman Lather I hear you and appreciate that Dan. I don't think we can apply the 400, and what I'm hearing from staff that that's never been done and that would be an incorrect way of going forward. Having said that I also agree that 138 is 138 and we're not going to take that back, we have to deal with that number and stick with it. The only really issue I see is how to get to the 158 and what I think is a zone variance. I don't think we can under the exiting regime of facts and law, get to 158 I just don't see that working. So help me understand differently and I'd be happy to ... but the 400 number does not apply to multi-family, I believe that is pretty clear.

<u>Dan Swavely</u> is that an interpretation you can make after you've now seen this ambiguity here as you've resolved other things that you've interpreted for developers.

<u>Chairman Lather</u> I don't think its ambiguity, I think it's never been done; it's never been interpreted that way.

<u>Dan Swavely</u> I'm not sure if it's never been done and with all due respect Joe says it's never been that's one thing ---

<u>Chairman Lather</u> if you can come up with an example where the Land Use Commission approved that calculation, I wouldn't have a problem then in using it.

<u>Dan Swavely</u> this is a critical turning point here and I just don't want to concede on one person's

<u>Chairman Lather</u> on the other hand why not protect yourself and do a zoning variance, a density variance and put the law on your side and get the whole project cleaned up.

Dan Swavely I appreciate that proposed strategy. We have scheduling issues, we have serious financing issues, six million dollars to do the conversion and that's already in place. And that's why I wanted to give the Commission a way to see the 400, give the 400 based on that theory, make the resolutions in the future if you wish saying that the commercial notation here does not refer to zones and that the 400 in the future cannot be applied for this. But as of today, I still believe you can look at that commercial, 400 per unit and you can say maybe it's not perfect but it's there and the Commission will do it and we won't do it again and cap us at 158.

<u>Chairman Lather</u> the problem there is that, in my thinking is that if we do it we're going to have to do it forever. How can we deny the next person?

<u>Dan Swavely</u> you've changed things all the time. You used to approve temporary workers housing facilities without some medical plans in place, transportation plans, church services, etc., you have systematically improved the

<u>Chairman Lather</u> that's because the law didn't address that so by resolution we created a mechanism to put that in place. In this case, the law seems to be pretty clear.

<u>Dan Swavely</u> well that's a sin of the past Mr. Chairman and we weren't there, Mr. Cho wasn't there, I wasn't there, and Mr. Brooks wasn't there. And I'm sure Mr. Santos did what he was told to do by the owner at the time.

Ike Santos I believe what we did was we used the 1,250 factor in there, but it didn't matter. We brought the project before the government agencies like Bureau of Planning and some of the other agencies and presented them a solution on how to clean up Marine Drive. I guess what we wanted to do was decide on what kind of project to put in there and this is what we came up with and they accepted whatever variances we needed.

<u>Chairman Lather</u> let me ask Richard, Joe and Marvin, you guys have been around a long time. Have we ever used 400 to calculate density for a multi-family project in any zone?

Joe Santos in any zone, multi-family dwelling 1,250; that's the set number.

Chairman Lather never in history? (Joe Santos responded never in history)

(Brief discussion on what other multi-family developments used the 1,250 matrix.)

Richard Rosario if it's now or then, I think we put 1,250 for residential and 400 for commercial. And I'm not sure what we did way back, but we mixed it together to see how it fits for that building with the proposed parking stalls. We used, as Joe said 1,250 for residential and 400 for commercial. But somehow it did not fit right.

Joe Santos Mr. Chairman remember it's the use. In the law if you build on the commercial side of the house, you put the first floor as a commercial you can go zero lot line across the court except for the rear side. So that's how they actually came straight to almost zero lot line all around the property. Then when you get above that you have to turn around and look at the use. What are you using above the first floor and if they're using multi-family it's 1,250. If you're using single family it's 5,000. For multi-family it is 1,250 and so that's what was applied to this development and all other developments that come in.

Monte Mafnas what was the date of the law?

Joe Santos in 1950 and the 1,250 has not been changed. Mr. Chairman, the development has proved that it is a worthwhile development; but, we want to make sure the Commission itself is protected from lawsuits. What we are saying is that either you ratify this zone variance, the 138 units; but they have to do it in a way where we do a findings-of-fact because that is a requirement of law. With the Ladera Towers application, the Attorney General came back and said here's the actually findings-of-fact that you must come up with for the zone variance. Likewise they're saying that it's 138 units, the Minutes and the NOA says that it's 35 percent over density we have to close that gap between that. Whether you include the park or not, that's fine because it doesn't say anything about including the park, well include the park.

<u>Chairman Lather</u> actually we can't include the park because the 1990 law specifically says we cannot include the park.

<u>Joe Santos</u> this was approved in 1988, it preceded the law. If the Commission turns around and says let's include the park, include the park. But still there's a gap between 35 over density and 138 units and that gap is 28 units. That's a variance that the Commission still has to justify

Chairman Lather no it wasn't parking it was for units, it's in the Minutes.

Richard Rosario yeah but it cannot comply with the parking stall for every 400 one parking stall.

<u>Chairman Lather</u> that argument doesn't work with all due respect. If we use your calculation you could do 250, you didn't have enough parking for 250 so you cut it down to one to one whatever that number is, but instead you (Richard) came before the TPC and said, we know it's 66 units we want a 35 percent increase in density why did you ask for a density increase if you know right now you were allowed 250 units. The answer is this is not how it was calculated.

<u>Dan Swavely</u> even 35 percent over 66 doesn't give you 138 either. You can shake those numbers around from here to Sunday and you're still tough coming up with what's in the Notice of Action for 138 when you read the Minutes, it's very confusing.

<u>Chairman Lather</u> I'm not even worried about the NOA; I agree that it is confusing. What I'm worried about is the discrepancy from what I'm hearing from you gentlemen right now. You're looking me in the eye and you're saying you divide by 400, we had 250 units, then why did you come for a density variance before the Land Use Commission. You stated in the Minutes Richard, "I agree, it's 66 plus 35 percent. Thank you very much Commissioners."

Richard Rosario I have to go back and study that.

<u>Dan Swavely</u> however Mr. Chairman, honestly he could have been misquoted in those Minutes. I've sat through Minutes in those days and I read the Minutes and I was quoted of saying things I swear I never said. He could have totally been misquoted; it could have been a typo. That's why I keep going back to the Minutes, it doesn't make sense and match it to the NOA, it doesn't make sense and match to the application, there's another set of numbers. So, you're question is right on why did the applicant come in with a density variance.

<u>Chairman Lather</u> let's forget all the numbers and let's say Richard was quoted wrong, why did you come in for a density variance.

Dan Swavely well Richard didn't, it was the applicant.

Chairman Lather he was representing the applicant.

<u>Dan Swavely</u> no, he was the Chief Planner, lke was the consultant. (Chairman Lather apologized for the mix up). Honestly, I don't think the density variance was ever acquired. Honestly I've seen that happen; it's not the consultant who decides what's going to be requested it's the developer, it's the owner.

My initial statement was this. It's kind of a complicated project, I don't want to reinvent history, and I want to take it where we are. I want to show you a path you can make a decision on and you can defend it. We can move ahead, cap it and honestly believe that that formula works to support our request.

Chairman Lather we also want to find a path and move forward. We just want to do what the law says. That's my concern. I'm hearing our staff interpret the law one way and I'm seeing you offering an alternative and I like your alternative. Your alternative would be much more palatable to me if there was no density variance request back in 1988. That to me is the fatal problem.

<u>Ike Santos</u> so all the three lots actually were included as part of the density and all that came to and that's what brought us here.

Richard Rosario you divide 100,000 square feet and divide that by 400.

Dan Swavely that's why you get over 250 and we're asking for 158.

Hee Cho commercial zoning does not mean including (unable to decipher). Otherwise if it everything has to be (unable to decipher) for multi-family unit 1,250 square foot, then the Ladera Tower cannot build and Leo Palace cannot build, it's a multi-family unit and Pia Resort cannot build. Even 400 square foot they have to make more density so they make a density variance, not for the 1,250 square foot. 1,250 square foot means (undecipherable) one acre of land is a very big land. One acre is 4,000 square foot and you can build only 32 units. Means you can build a four-plex, duplex. If commercial zoning means allowable, like I said in the Mainland that's C2, C4. In C2, C4 everyone can build a multi-family unit. And everywhere there's high rise condominium, that's all in the commercial zoning not multi-family R-zone. So I don't know where we are stick on; this is not an issue I believe. Commercial zoning means they build up or the commercial retail space and plus multi-family and plus hotels. As he says, 400 square feet per unit, per door. (SIC)

<u>Dan Swavely</u> I believe if we were in an R2 zone it would be unquestionable and we would be coming back and asking for a zoning variance that's our position, but because we are in a commercial zone we believe that applies and particularly in this case when you apply that it would provide so much more than what we're asking. We're only asking for 20 more. We have the parking; we're not changing anything in the structure. That's the request before the Commission.

Hee Cho when we are building up more than 206 units on the same lot then we need a variance; just like Pia Marine.

<u>Dan Swavely</u> and if the Commission in its judgment seeks to give the 158 with conditional approval, that's regardless of what number we use, that's fine. That's all we're looking for; we cannot go more than that anyway. If you want to cap it at that, that's fine. But, I think we've shown a way that you can come to that conclusion for a decision in support of our request.

<u>Chairman Lather</u> Richard, are you able to tell the Commission how the 66 base units got calculated back then?

Richard Rosario during that time we have a lot of interpretation on how to do the density use. If you're in a commercial area sometimes we ... and during that time we have no interpretation yet from the AG's Office or somehow like that, and so we concluded that it sits on a commercial. We divide that ... 400 square feet is one unit of that and there are a total of 138 units. It's not in an R2 zone. Nowadays if you're in a commercial zone and you're building up a multiple you divide that into 1,250.

<u>Chairman Lather</u> back in 1988 the application was for a density variance for height. If their interpretation and I don't know the answer, I'm asking this intelligently; if the interpretation was to take the lot area divide it by 400, you come up with 250 sum units. Why did you come for a zone density change?

Richard Rosario because of the parking space.

<u>Dan Swavely</u> that's of course true, but that's not what density is based on. It doesn't say these are the uses, these different categories represent our zones; multi-family, single family, commercial, light industrial, heavy industrial, that's R2, R1, C, M1, M2 zones.

Chairman Lather so what do you do in an "A" zone?

Dan Swavely I don't know, "A" zone is probably carried somewhere else ... I don't know. What I'm trying to explain here is that just like the history that Joe has dissected maybe this happened and maybe that happened well there's different ways of accepting them. What's happened is what we see there based on prior history and also what I'm saying is that this is a logical interruption of 400 square foot for purposes of the Agana Beach Tower calculations. I think the Commission can hang their hat on that and grant for only 20 more units and not the number that would pop out.

Chairman Lather if you take the total square feet which is 102,244 ---

Joe Santos the square footage for which part? The whole thing including the park is 102,244.

Chairman Lather if we take that number and divide it by 66 ... see that's the problem and Richard you were here at that 1988 meeting. The Territorial Planning Commission said in the Minutes, we're going to take the base allowed number of units for this property, 66 and grant a 35 percent increase. That's what you said, it's in the Minutes, and you said it. Where did that 66 number come from?

Richard Rosario probably during that time when they proposed to include the park.

<u>Chairman Lather</u> I just did that and it doesn't work out (Joe Santos responds that it is 81,407 square feet, calculation divided by 66 does not work out either). Ike, what's the answer?

Dan Swavely I've done the math too and it doesn't work out.

Ike Santos when this project actually started it started with the old Panciteria and at that time Henry Simpson was the owner. So they came up with the idea of putting in a multi-family structure. Unfortunately, when Marine Drive was rebuilt and kind of raised the street up and took up portions of the private properties; you have the funeral home and you also have another business there and they have no parking there. We looked at that project and it wouldn't make sense to put a big project up and you have these businesses on the side that wouldn't make it a great appeal. This is how the commercial building came out; we took those two units and decided to give them space on the first floor as a trade off and in sense it also helped out Bureau of Planning's cost about the Agana Bay urban waterfront project which was to wipeout all those areas and develop it into a park. So, it we came up with this idea to give them retail space on the bottom and that way they'll have ample parking and in return what we get this high rise building and allow us the density. But what we did was we developed the two properties that have funeral home and the restaurant there. And the developer developed that place into a park and deeded that back to the government. But what they also did, they also wanted to take over and maintain the park itself.

Dan Swavely which we have done.

Richard Rosario and at the same time, just take the whole lot as a commercial use and divide it by 400, the total of how many units were to come.

Richard Rosario (cont'd) under consideration is that density ... the commercial use, does it meet the criteria of parking. Now if you reduce the commercial and making it to R2 it is lessening the parking area and meeting the requirement of the condominium.

Dan Swavely I don't deny that this isn't a little complicated. We're not here to try to explain everything that has happened in the past. What I'm here is to ask this, we have a great project down there. We have a changing economy where we want to get rid of some of the commercial space, we want to put in more condo units; we already have a contractor in place, we already have a loan to do it, it's good for everybody. In this explanation of how we fit within this number in GovGuam law, I think the Commission can say yeah that works, I see it that works. There might be other things that work too because you have huge discretionary judgment in this case; but, I think all we need to do is show you one way that works and then we can get on with this project and do what, I think, fits very well within the Agana Beach Tower project.

<u>Tricee Limtiaco</u> Dan, thank you for that. You said (correct me if I'm wrong) in 1990 according to this paper, the initial approval in 1990 allowed for 206 units. I'm looking at the Notice of Action and the Notice of Action says that the approval was for 138. Can you help me do the math there? Maybe I'm missing something?

<u>Dan Swavely</u> I'm not sure what you all received and don't know what you're reading (Mr. Swavely is provided a copy of the NOA). That 206 came from the calculation of the 400.

Joe Santos I just want to explain that on the zoning law on that table, it says "use." So the apartment use is for multi-family residential while the commercial use that you see in the bottom for the 29,699 deals with the setback in the density. On the lot area per dwelling unit for a multi-family unit which is a residence is 1,250 square feet while a commercial (a gift shop, a restaurant) is computed at 400 square feet for density.

I saw the chart that you were looking at Commissioner Limtiaco and they're using the commercial use density for the apartment multi-family density and that's not what you do you use the 1,250 versus the commercial use because what are they coming for? They're coming in for an apartment and they're coming in for commercial activity. That's why the square footage is important and the number of units is important in what you're asking for. When they are asking for a multi-family apartment, that's the use multi-family so go to the lot area per dwelling unit and it's 1,200. Under commercial you go 29,699 and you take 400 square feet and that's how you compute how many commercial elements or units you can have in there.

Commissioner Limtiaco okay thank you.

Chairman Lather where did this chart come from?

Joe Santos that is the hotel zone rules and regulations. So this is not in a hotel zone and does not apply. That's why I brought up that this doesn't apply. I wasn't sure how they came up with the computation that was mentioned and you were trying figure out the difference between what was requested and why is there a discrepancy between the two and I said I can't answer that, I don't know what chart they used unless I look at it.

Commissioner Limtiaco Mr. Rosario answered that question on how they computed it.

<u>Chairman Lather</u> there appears to be some logic in what Joe is saying in that you couldn't have a 400 square foot dwelling unit.

<u>Commissioner Bathan</u> sorry to interrupt; can you also include the parking calculations. For example in 1990 how many parking spaces did you have and in 2005 you had "x" number of spaces. (Mr. Santos pointed out that it was on the chart included in the staff report)

<u>Dan Swavely</u> the issue then comes down to what is the allowable density for this property. Again, I don't want to (and I hope the Commission agrees) go back and say, well the former Commission allowed us to use the public park to calculate density. And now say, well maybe we shouldn't have done that. I can't go back to that, the place is already built and we've already got all of this going ... can't go back to that. We would like you to agree with us that we start where we're at today.

I think the issue about density boils down to this; there were 101 thousand more or less in changed square feet of the private and park properties. The applicant at that time was given a variance to extend 35 percent above that so that 101 for purposes of calculating density grew to 137 in change. What is the figure that we divide per unit, what is the square foot figure per unit into that 137,000. Joe uses 1,250 square feet as required by law. I use the chart that's in the law for commercial and it says for commercial zones 400 square feet. Why would a commercial square footage be so much lower than a multi family square footage? (Advises the Commission he is referencing Section 61501)

So why does the commercial space allow so many more units into a standard acre than an R2 simply because commercial deals with different types of units and commercial generally has higher height availability to it.

I'm saying that the Commission can take this citation in Section 61501 because we are in a commercial zone and not in an R2 zone and you could apply that 400 square feet into the 137,000 square feet and come up with a number (I don't know, do the math) vastly more than what we're asking for.

Further, even if you don't include the park square footage and you stay with the 101,000 square feet of private, the 400 into 101,000 is still 250 something. I don't see the density issue here that has been kind of surrounding this project all along. I'm open to the Commission's response to that, to that way.

Joe Santos I'm looking for the section of the law that actually talks about the multi-family residential being 1,250 versus 400 on Section 61502 where it gives about a hotel in a commercial zone that hotels/motels can go down to 400 square feet.

<u>Ike Santos</u> I am the original one that handled this case back in 1988. And I think what Joe is trying to refer to is that back in 1998 the rules and regulations were different as it is now with what Joe is trying to refer to. I can understand if you were to treat a multi-family development in a commercial zone but back in 1998 that did not exist.

<u>Joe Santos</u> actually it did. It was amended and then placed back in the law again and that's why there's a certain exception to the law. But the 1,250 is still the applied figure that is used for apartments or multi-family dwellings.

Chairman Lather Richard, you were the guy that did the density calculations back in 1988.

R2 and he is converting it to a lesser density right now. So the only thing now you have to take

Joe Santos the Government of Guam.

<u>Chairman Lather</u> I don't understand the purpose of the land exchange; so there were these other lots, where they located?

Joe Santos those other lots were consolidated. The "NEW" is a consolidation and it was sub-divided into two lots. (Pinpoints the lots in question)

<u>Chairman Lather</u> Commissioners before we hear from the applicant, I want to again going back to the two basic interests here; we have the issue of the density and we have the issue of amending the HPR. Before we get into all of the difficulties of the density (and Joe you could help us out) let's just assume that density is not an issue, what about the revised HPR, are there any issues with that that we should be concerned with?

Joe Santos there shouldn't be any issues with it. Attorney Brooks explained yesterday that it is just a switch over of different space but will still have the same common area. There isn't any issues with the HPR, it's okay if the issue of the density isn't there.

<u>Chairman Lather</u> on the issue of amending the supplementary HPR apart from density, I want to know if there is public comment on that particular issue (none noted). Regarding the issue of amending the HPR that's the common element issue, we're going to consider that one finished.

Now we've got to get into this issue about density. Let's have the applicant explain their side and then we'll have discussion.

Terrence Brooks I will turn it over to Mr. Swavely who is much more in depth in these issues.

<u>Dan Swavely</u> I didn't see the staff report but I have been following Joe's work and I must say that in the many years that I've worked with Joe this is probably one of the most analytical reports that I have heard and applaud him for the time he's put into it and it's a lot hours. I respectfully disagree with some of the options, I think there is an option on the table that the Commission can clearly approve today rather than go through a variance application or supplemental. I'm going to try to convince you that that is a road.

It's a complicated issue when you start dissecting the history of it especially in the absence of Minutes and some important documents; and I remember those days when we waited two years for Minutes to come out. It was really bad for everything and today it's so much better. If we had this then, we probably wouldn't be here today. The fact of the matter is we have a successful project there, a landmark in that part of Guam; hired a lot people, paid a lot of gross receipt taxes and is a viable business. I hope the Commission at its discretion doesn't look back and start saying well maybe that old Commission missed this and or now there's that. I would like to start with what we have there today and kind of build on it. Mr. Cho bought the property long after it was constructed. It had building permits, beneficial occupancy permits and everything else by this Government of Guam. I've got to believe that what's there today is legitimate and is not in non-conforming use as Mr. Santos implied.

With that said, I think it's important to have an overview of what it is we're trying to do before you actually get into the density issue. If you will indulge me for just a minute or two, I'll put something on the whiteboard here which I think will cut through much of the staff report and its merits through aberrations. (Refer to exhibit 4 on the presentation)

<u>Chairman Lather (cont'd)</u> changes over the years. What we finally got down to today is a request for supplemental HPR which is the item that's on the agenda today which we will be hearing.

For full disclosure, on Wednesdays we have a technical meeting and we did discuss this with Mr. Brooks to try to understand the legal issues that were involved. Commissioner Limtiaco and Commissioner Park and I sat down with the Chief Planner and Mr. Brooks yesterday and spent some time going through this. Essentially what we came up with is that there are two issues; one is the density question and the other involves the common element questions. So we kind of narrowed it down to those two issues which we will be focusing on today.

We want to follow our regular procedure. I want to first turn the floor over to Joe (Santos) for the Staff Report.

<u>Joe Santos (Case Planner)</u> summarized the staff report to include the purpose, facts and staff recommendations (Refer to Attachment A for full contents of the report).

(Attachment A - Staff Report dated June 28, 2012)

Chairman Lather questions for staff.

Commissioner Limitaco (on Page 1 under "Facts" 2B) are there two lots or three lots?

<u>Joe Santos</u> if you look at the Minutes, the position of the Commission was that the density shall not exceed 35 percent of the number of lots after taking into consideration both public and private lands described in the presentation. But nowhere in the discussion of the Minutes does it say that it's going to include it it just takes it as a condition. So, how you interpret it is up to the Commission, and that's why I put both in there; but the development is only on those two lots.

Commissioner Limitiaco only on the two lots excluding the park.

Joe Santos excluding the park and that's why the park was separated and now is under GovGuam authority. I'd like to note that the park area that was land exchanged is lesser than what was not exchanged. But again, we can only focus on what the development is actually sitting on. Does that answer your question?

<u>Commissioner Limtiaco</u> it does; however in your report on Page 3 where it says on September 8th the Commission approved and it says that the approval was acted on and the first Commission says that the density is not to exceed. After taking into consideration with both private and public lands described in the presentation which is why I'm asking.

<u>Joe Santos</u> the presentation is not in the packet. We don't know if it was included as part of the count that's the report or the writings refers to only the two lots not the rest. But we are giving the benefit of the doubt to the applicant and saying okay let's include the park as a part of it.

Chairman Lather what land was exchanged?

Joe Santos the park ... - R2

Chairman Lather who owns the land now?

<u>Chairman Lather</u> I should also clarify from our standpoint that that's not part of our process. Those other hearings are internal to the University of Guam and are not a requirement of your application, but it helps you certainly in the community. We thank you for those comments.

Anything further? (None noted)

If you want to check back with the Department of Land Management or watch the newspapers it will be advertised. There's also a requirement that the sign on the property which looks like this (displays photo copy of the billboard to the audience), it's a notice to rezone for the height variance that will have to be re-posted ten days prior to the hearing at the Mayor's Council if it restarts, and so you could always look at the sign for the dates and times. Staff is very good at answering questions if you call in. Anything further questions? Commissioners?

<u>Lillian Mariano</u> I just would like to suggest that if this is brought up again for a public hearing that it be held during after hours because a lot of residences here have to sign leave. I would like to suggest that it be held after working hours.

Chairman Lather ma'am we do have a hearing at the Mayor's Office in the evening that's conducted and was for this case also and that will be on the sign in property and that's the time to take in public input and this is the official secondary hearing. There are always two hearings for these. There's one in the evening at the Mayor's Office; but we appreciate that and we respect that.

If there is nothing further the item is withdrawn and we'll give you information when we find out something new. We thank you all for your input, and I want you to know that it is important. Mr. McCormick you did an excellent job on your written material and that will be part of the record and I thank you all for being here today.

Moving forward to our agenda, we'll go back to our regular item on the agenda.

III. Old or Unfinished Business

Horizontal Property Regime

A. The Applicant, Alupang Beach Tower Condominiums represented by Attorney Terrence M. Brooks, P.C.; request to amend its existing HPR, on Lot 2015-1-REM-NEW-2 and Lot 131 Rev Unit 1, in a "C" (Commercial) zone, in the Municipality of Tamuning, HPR Registration No. 92, under Application No. 1992-39B. (Continuation from GLUC meeting of 8/28/2008).

Case Planner: Joseph Santos

<u>Chairman Lather</u> Commissioners, this one is going to be a bit more complicated than the other one. I want to start by reminding you where we've been on this.

This goes back to 1988 and in my opening remarks about the Minutes; this is the one that I was referencing. A meeting was held in 1988 and the Notice of Action didn't get recorded until 1990 because there were no Minutes.

Generally what we've had is a multiple step process with Alupang Beach Towers. They went from condominiums to hotel back to condominiums in various stages of evolution. It's been increased and decreased and modified in number of units. There have been a number of

GUAM LAND USE COMMISSION

Thursday, June 28, 2012 Regular Meeting

Department of Land Management Conference Room ITC Building, Tamuning

MEMBERS PRESENT:

Mr. Jay L. Lather, Chairman

Mr. Lawrence Rivera, Commissioner

Ms. Conchita Bathan, Commissioner

Mr. Andrew Park, Commissioner

Mr. Monte Mafnas, Acting Executive Secretary

Legal Counsel - Vacant

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GUAM LAND USE COMMISSION REGULAR MEETING MINUTES



Department of Land Management Conference Room ITC Building, Tamuning



Thursday, June 28, 2012 1:35 p.m. to 4:30 p.m.

Application No. 1992-39B

NOTICE OF ACTION

Alupang Beach Tower Condominiums
Represented by Terrence M. Brooks
Lot #2015-1-REM-NEW-2 & Lot 131 Rev Unit 1,
Municipality of Tamuning
GLUC Hearing Date: June 28, 2012 and July 12, 2012
Date of Preparation of NOA: July 16, 2012
Page 3 of 5

APPLICATION DESCRIPTION: Alupang Beach Tower Condominiums requests to amend its existing HPR, Lot #2015-1-REM-NEW-2 & Lot 131 Rev Unit 1, in a "C" zone in the Municipality of Tamuning, HPR Registration No. 152.

COMMISSION DECISION: APPROVED WITH CONDITIONS.

- 1. Based upon the minutes of the meeting and the testimony of the former Chief Planner, Richard Rosario, the GLUC accepted the fact that the former TPC granted a density variance for this project in 2008 which was stated as 35% above the density allowed for both the public and private lots underlying the project. Mr. Rosario also testified that the TPC used the density calculation of one residential unit per 400 SF of land based on the fact that the lot was zoned C. Although the DLM planning staff now uses the calculation of one residential unit per 1250 SF of land (which the GLUC believes is the correct calculation), the testimony of the former chief planner, together with the minutes from the meeting of the TPC in 2008 lead to the conclusion that the TPC clearly intended to then grant a density variance to allow 35% over the base density of 255 units (102,244 SF/ 400SF). The GLUC therefore concluded that the 2008 action of the TPC effectively granted a density variance to a maximum of 344 residential units (255 x 1.35).
- 2. The GLUC also was cognizant of the fact that the applicant came before the GLUC in 2005 for an amended HPR and the GLUC at that time granted the amendment based on the density count of 138 residential units. The argument was presented that a density calculation based upon the correct 1250 SF would have resulted in a maximum approved density of only 110 residential units (102,244 SF/1250 X 1.35) therefore the 2005 action would have to have been based on a larger allowed density calculation as well.
- 3. Based on the Applicant's request to continue the current unit count of 138 and delete the existing commercial uses and replace that area with 20 additional residential units, for a total of 158 residential units, the GLUC concluded that the total number of requested units was well within the maximum number allowed by the former TPC by its grant of a density variance in 2008. Therefore, a density variance is not required for the current application.
- 4. In order to clarify this density calculation, in its finding of facts the GLUC affirmed that a) residential unit density calculations for this project should have been based upon one unit per 1250 SF of land and b) notwithstanding this finding, the GLUC hereby ratifies the actions of previous commissions and resolves that the allowed density is now 158 residential units.
- 5. The 27,699 square feet of commercial space under the revised supplemental HPR is permitted to be converted to 20 additional residential space based upon the calculation of one dwelling unit per 1250 SF.
- The Applicant's request to change approximately 27,699 SF of commercial use to 20 residential
 units and exchange existing hotel uses to residential uses is granted such that the total number of
 residential units shall not exceed 158 units.

NOTICE OF ACTION

Application No. 1992-39B

Alupang Beach Tower Condominiums Represented by Terrence M. Brooks Lot #2015-1-REM-NEW-2 & Lot 131 Rev Unit 1,

Municipality of Tamuning

GLUC Hearing Date: June 28, 2012 and July 12, 2012

Date of Preparation of NOA: July 16, 2012

Page 5 of 5

CERTIFICATION OF UNDERSTANDING

- The 27,699 square feet of commercial space under the revised supplemental HPR is permitted to be converted to 20 additional residential space based upon the calculation of one dwelling unit per 1250 SF.
- 2. The Applicant's request to change approximately 27,699 SF of commercial use to 20 residential units and exchange existing hotel uses to residential uses is granted such that the total number of residential units shall not exceed 158 units.
- 9. Applicant is permitted to continuing using the approximate remaining 2,000 SF of commercial space as a commercial/office use.
- The GLUC approved the amended HPR, Declaration, By-Laws and supporting documents as presented in Applicant's document identified as "First Amendment to the Replacement Declaration of Horizontal Property Regime of the Alupang Beach Tower" which was received by the GLUC on July 12, 2012.

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(Applicant [Please pr	int name])	(Representative [Please print na	
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Applicant	Date	Representative	#/14/12 Date

GUAM LAND USE COMMISSION



Chairman Jay L. Lather Vice-Chairman Lawrence S. Rivera Commissioner Conchita Bathan Commissioner Roland Certeza

Commissioner Andrew Park
Commissioner Beatrice P. Limitaco
Commissioner - Vacant

Monte Mainas, Executive Secretary Vacant, Assistant Attorney General

AGENDA

Regular Meeting

Thursday, July 12, 2012, 1:30 p.m.

Department of Land Management Conference Room 590 S. Marine Corps Dr., 3rd Floor, ITC Building, Tamuning

I. Notation	of	Attendar	ıce
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1 Quorum

] No Quorum

- II. Reading and Approval of Minutes
 - GLUC Regular Meeting of June 28, 2012
- III. Old or Unfinished Business

Horizontal Property Regime

A. The Applicant, Alupang Beach Tower Condominiums represented by Atty. Terrence M. Brooks, P.C.; technical review of Supplementary HPR documents only, HPR Registration No. 92, under Application No. 1992-39B. (Continuation – GLUC Meeting of 6/28/2012)

Case Planner: Joseph Santos

Conditional Use

- B. The Applicant, Byong Ho Kim represented by Ignacio F. Santos; request for a Conditional Use permit for a proposed two-storey building consisting of a retail store on the 1st floor and an office on the 2nd floor, on Lot No. 5233-1 in the Municipality of Dededo, in an "A" (Rural) zone, under Application No. 2011-69. (Continuation; GLUC meeting of 6/14/2012)
 - Case Planner: Penmer Gulac
- C. The Applicants, Chang Ki and Otilia F. Bang represented by Richard Rosario; request for Conditional Use permit to operate a retail (Mom & Pop) store on Lot 3-4, Tract 1033, in an "A" (Agricultural) zone, in the Municipality of Dededo, under Application No. 2010-15C. (Continuation; GLUC Meeting 6/28/2012) Case Planner: Penmer Gulac

IV. **New Business**

Zone Change

D. The Applicant, RJY Corporation represented by FC Benavente, Planners; request for a Zone Change from "A" (Rural) to "C" (Commercial) zone for a proposed retail and convenience store on Lot 10102-11NEW-1, in the Municipality of Yigo, under Application No. 2011-70.

Case Planner: Celine Aquilar

٧. Miscellaneous Matters

E. Order to Show Cause - Richard Bai; explanation on zero side setbacks on both sides of a multi-family residential structure located at Lot 3202-1-3 in the Municipality of Sinajana.

Case Planner: Marvin Aguilar

F. The Applicant, Rita Franquez represented by RIM Architects; action to re-certify an existing Conditional Use on Lot 7, Block 25 in the Municipality of Hagatna. Case Planner: Marvin Aguilar

VI. Adjournment

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GUAM LAND USE COMMISSION REGULAR MEETING MINUTES



Department of Land Management Conference Room ITC Building, Tamuning



Thursday, July 12, 2012 2:15 p.m. to 4:20 p.m.

GUAM LAND USE COMMISSION

Thursday, July 12, 2012 Regular Meeting

Department of Land Management Conference Room ITC Building, Tamuning

MEMBERS PRESENT:

Mr. Jay L. Lather, Chairman

Mr. Lawrence Rivera, Commissioner

Ms. Conchita Bathan, Commissioner

Mr. Andrew Park, Commissioner

Ms. Beatrice "Tricee" Limtiaco, Commissioner

Mr. Roland Certeza, Commissioner

Mr. Monte Mafnas, Acting Executive Secretary

Legal Counsel - Vacant

Guam Land Use Commission Regular Meeting Minutes Department of Land Management Conference Room Thursday, July 12, 2012 ● 2:15 p.m. to 4:20 p.m.

Notation of Attendance

Chairman Lather called the regular meeting of the Guam Land Use Commission for Thursday, July 12, 2012 was called to order at 2:15 p.m., noting a quorum.

Present were: Chairman Jay Lather, Vice Chairman Lawrence Rivera, Commissioners Conchita Bathan, Andrew Park and Beatrice "Tricee" Limtiaco, Executive Secretary Monte Mafnas and Acting Chief Planner Marvin Aguilar.

II. Approval of Minutes

Chairman Lather first item today is approval of the Minutes dated June 28, 2012.

Commissioner Bathan made a motion to approve the Minutes of June 28, 2012.

Chairman Lather moved and seconded by Commissioner Certeza; with all in favor.

[Motion to approve passes unanimously; 6 - ayes, 0 - nay]

III. Old or Unfinished Business

Horizontal Property Regime

A. The Applicant, Alupang Beach Tower Condominium represented by Atty. Terrence M. Brooks, P.C.; technical review of the Supplementary HPR documents; HPR Registration No. 92, under Application No. 1992-39B (Continuation – GLUC Meeting of 6/28/2012). Case Planner: Joseph Santos

Chairman Lather Commissioners you will recall this was entertained at our last meeting. There was considerable discussion about this development; it was an attempt to push back some of the units from hotel back to condominium. There was a lengthy discussion concerning the calculation of the density of the units. The Commission finally approved to allow the existing 138 units to be all converted from hotel to residential and the addition of 20 units from commercial which would still be within the density allowed in the project. The last remaining item was the documentation of the amended HPRs. So we put this back on the agenda for today to entertain the technical documentation, give us a chance to review it. I will disclose to the Commission as always, that the Chief Planner and I did meet with Mr. Brooks two days ago and we went through all the documentation. And what you have before you now with the green cover is the amendments that we required from them; it's called the First Amendment to

<u>Chairman Lather (cont'd)</u> Replace the Declaration of Horizontal Property Regime for the Alupang Beach Tower. Everything is fully vetted and approved by the Commission, staff and myself and it's my recommendation that this will complete everything for this project and we'll go forward on that.

Mr. Brooks anything to add to that? (Mr. Brooks responds "no.") Is there any public comment regarding this HPR change? (None noted) Chief Planner, anything to add to what I said? (Mr. Aguilar responds "no.") Commissioners, comments or questions? (None noted)

It's a well written document and it does meet all the requirements. Therefore, we will entertain a motion to approve the First Amendment to Replace the Declaration.

<u>Commissioner Park</u> made a motion to approve the First Amendment to Replace the Declaration of Horizontal Property Regime for Alupang Beach Tower Condominium.

Chairman Lather moved and seconded by Commissioner Limitaco. Mr. Park comments?

<u>Commissioner Park</u> I think we've discussed this application in depth and throughout the procedure, we are comfortable to approve this project as requested.

<u>Commissioner Limtiaco</u> I meant to congratulate the applicant for taking on this project. It's been a long time coming, and I think we're done with it and wish you good luck.

[No comments noted from Vice Chair Rivera, Commissioners Certeza and Bathan]

<u>Chairman Lather</u> all in favor of the motion to approve say "aye" [Chairman Lather, Vice Chair Rivera, Commissioners Limtiaco, Park, Bathan and Certeza] and those oppose say "nay."

[Motion passes unanimously; 6 - ayes, 0 - nay]

<u>Chairman Lather</u> Mr. Brooks, previously we approved your changes in configuration which are now documented by this amended replacement HPR so you're project is free to move forward in all areas. We wish you all the best of luck and please let us know if you have any problems.

Terry Brooks thank you very much on behalf of Mr. Cho and everybody that's been involved.

Chairman Lather back to Conditional Uses and these are old business as well.

Conditional Use

B. The Applicant, Byong Ho Kim represented by Ignacio F. Santos; request for Conditional Use Permit for a proposed two-storey building consisting of a retail store on the 1st floor and an office on the 2nd floor, on Lot no. 5233-1 in the Municipality of Dededo, in an "A" (Rural) zone, under Application No. 2011-69. (Continuation; GLUC – 6/14/2012) Case Planner: Penmer Gulac

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April 13, 2016

VIA HAND DELIVERY ONLY

Mr. John Z. Arroyo, Chairman Guam Land Use Commission Department of Land Management Government of Guam ITC Building, 7th Floor 590 S. Marine Corps Drive, Suite 733 Tamuning, Guam 96913

Re: Alupang Beach Tower Homeowners Association: Request For Issuance of Supplementary Final Public Report, Alupang Beach Tower Condominiums, Lot Numbers 2015-1-REM-NEW-2 and 131-REV-UNIT 1, Tamuning, HPR 92

Dear Chairman Arroyo:

This office represents Alupang Beach Club, Inc. (hereinafter "ABC"). On behalf of ABC, we write to formally object to the Replacement Horizontal Property Regime ("HPR") proposed for Beach Tower ("ABT") by the Alupang Beach Tower Homeowners Association, which is currently before the Guam Land Use Commission ("GLUC" or the "Commission") as a request for issuance of a first supplementary final public report, as referenced above.

During the previous Commission meetings over the years, Commissioners have expressed concern about the complexity of ABT's proposal and its impact. In particular, there has been concern about setting precedent for future applicants if ABT's proposal were to be hastily approved. ABC respectfully requests that the Commission take a "time out" and table further action on the instant application until such time as proper notice can be given to and consent received by those concerned.

Chairman John Z. Arroyo April 13, 2016 Page 2 of 8

BACKGROUND

ABC submits this objection with all due respect to the Commission and its members. ABC is not seeking to be obstructionist or to interfere with the general rights of property owners to develop their property to its highest and best use. However, ABC and other minority owners continually find themselves taken advantage of by the majority Cho group owners, who have exhibited a pattern of running the homeowners association as if the group owned all of the units, in complete disregard of the rights of the minority owners.

By way of background, it should be emphasized that this is not the first time the Cho group, as majority owners of ABT have disregarded the rights of the minority owners. In fact, on July 9, 2004, the Superior Court of Guam was so concerned about self-dealing and disregard of minority owner rights at ABT that it concluded that the Cho group was "unable to act independently and in the best interest of all its members." Accordingly, the court appointed a receiver to protect the interests of ABC and other minority Association members. See Alupang Beach Club, Inc. v. Hibari Guam Corp. et al, Civil Case No. CV1983-03 (Decision and Order July 9, 2004) (per Lamorena, J.), at 8.

It is apparent that the Cho group has not learned the lesson that the Superior Court attempted to teach. Regrettably, the group has again disregarded the rights of the minority owners in advancing the instant Replacement HPR, without proper notice or consent, and which would if approved be detrimental to ABC and other minority owners.

The March 18, 2016 cover letter signed by Min S. Cho states that the notice of action recorded on August 8, 2012 under document number 840122 "approved the conversion of 102 existing rooms in a hotel unit to individual condominiums. It also approved the conversion of commercial spaces into 20 individual condominium units." The letter continues, "[a]fter the notice of action was issued the condominium contained 158 individual condominium units and two commercial units. Unfortunately a final public report was not issued after the notice of action was recorded due to an oversight on the part of the applicants."

The Commission's July 16, 2012 Notice of Action was recorded on August 8, 2012. See document number 840122. Prominently displayed on the face of the document is the following notation:

Chairman John Z. Arroyo April 13, 2016 Page 3 of 8

IMPORTANT NOTICE - READ CAREFULLY

"Pursuant to section 5 of Executive Order 96-26, the applicant must apply for and receive a building or grading permit for the approved GLU C/GS PC project within one (one) year of the date of recordation of this notice of action, otherwise, the approval of the project as granted by the commission shall expire." *Id.* (emphasis in the original.)

Thus, while the Commission issued a notice of action back in 2012, the Association admits that a final public report was not issued "due to an oversight on the part of the applicants" and that "[c]onsequently, the action before the Commission now is to request reappproval of the First Amendment to the Replacement Declaration in order to timely file the Supplemental Public Report." Since—pursuant to the prominent notice which appears in the face of the July 16, 2012 notice of action—"approval of the project as granted by the Commission[has] expire[d]," it is now incumbent on the Commission to start afresh with its evaluation of the project, not simply to rubber stamp what was done without proper notice four years ago.

ABC'S STANDING TO OBJECT

ABC is the lessee of commercial unit #2 and operates a recreational business in the area adjacent to the ABT tower. ABC's business and property interests will be directly affected by the proposed new HPR. Moreover, ABC has a valid voting interest in the project by virtue of the November 30, 1992 Condominium Unit Lease Agreement between Margarita H. Inocentes and ABC Associates, which lease is of record at the Guam Department of Land Management as Instrument Number 480490. The lease was duly assigned to ABC on February 27, 1996, via Instrument Number 542681, and it expires in 2031. The Lease expressly provides that "tenant shall be considered the owner of the premises for purposes of membership in the organization, with full voting rights therein." Id. at §29. By virtue of the lease, ABC has full right to vote the interests of the property owner.

The reason that ABC addresses the issue of standing is that the Association and the Cho Group previously attempted to challenge ABC's standing to object. The Superior Court of Guam firmly rejected that position, holding that "Defendant's argument that Plaintiff [ABC] has no standing cannot be sustained." Alupang Beach Club, Inc. v. Hibari Guam Corp. et al, Civil Case No. CV1983-03 (Decision and Order July 9, 2004) (per Lamorena, J.) at 3.

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OBJECTIONS

1. Lack of Notice

Sufficient notice was not provided to ABT unit owners either in 2012, when the application was originally made or now, when it comes again before the Commission. First, no notice was provided of a special meeting for the purpose of promulgating the replacement HPR as required by the Homeowners' Association Bylaws. See Bylaws, Article I, Sections 4 and 5.

In addition, the Association has not provided proper notice of these proceedings before the GLUC. An applicant seeking an amendment to a site plan which was previously approved by the GLUC must give personal notice at least 10 days prior to the hearing to property owners within a radius of 500 feet. 21 G.C.A. §§61303(b) and (c). In this instance, the applicant has not presented any evidence or made any showing that it has given the required notice to adjoining landowners either in 2012 or in 2016.

ABC, which holds a voting interest in ABT and, moreover, has its office well within the 500 feet zone, only learned about these proceedings by reading a legal announcement in one of the local newspapers. The Association may claim that it gave proper notice. However it has failed to prove compliance with its notice obligations. Essentially, all the Replacement HPR packet says in this regard is that because the Cho group is the 75% owner of the project, it effectively gave notice to itself. Needless to say, this is not how notice is properly to be given.

2. Lack of Consent

Even if the Association had discharged its burden of affording timely and sufficient notice of the proposed Replacement HPR, it has failed to demonstrate that it has received the requisite consent for this action. In fact, Guam law requires the approval of *all* unit owners in order to effectuate the requested alteration to the HPR. Specifically, 21 GCA §45108 requires unanimous consent of all apartment owners before any work can be performed which would "reduce the value" of the property or "add any material structure." Moreover, 21 G.C.A. §45106(b) requires consent of all of the apartment owners affected when any alteration is made to the "common interest" appurtenant to each apartment as expressed in the existing HPR declaration.

In addition to these statutory provisions, the HPR contains provisions regarding a an owner's ability to make a substantial alteration to the HPR, as follows:

Chairman John Z. Arroyo April 13, 2016 Page 5 of 8

Paragraph 21. Alteration and transfer of interests: The common element interest and easements appurtenant to each unit shall have a permanent character and shall not be altered without the consent of all of the unit owners affected, expressed in an amendment of this replacement declaration and duly recorded with the Department of land management, government of Guam. [HPR, provision 21, page 33.]

Based on the applicable statutes and HPR provisions, the Applicant cannot effectuate the substantial alteration to the HPR being requested absent unanimous consent, which it has neither sought nor received. The proposed alteration would tend to reduce the value of the property. The change from a hotel facility to individual condominium units for sale or lease would reduce the value of the other minority condominium units because the Alupang Beach Tower would then be subject to a greater density of condominium owners. Moreover, as discussed more fully below, the alteration proposed by the Cho group affects the "common element" interest of the Alupang Beach Tower.

The current request to change the current ABT HPR to eliminate the 102 room hotel and convert the space into 120 condominiums, and to construct an additional 20 new condominium units benefits only one owner, the Cho group, to the detriment of ABC and other unit owners.

3. Adverse Parking Impact

ABT has is no available street parking adjacent to the complex. Thus, all ABT parking needs must be accommodated by the parking garages on-site. Accordingly, parking arrangements are of crucial importance at ABT.

The declaration of horizontal property regime for ABT was filed with GLUC on June 5, 1992. The declaration provides that there shall be 253 parking spaces for the project. After construction commenced, commercial businesses and additional residential units were constructed in areas that had been dedicated to parking and common areas. The new HPR proposes to further reduce available parking spaces while at the same time placing a much higher demand on the spaces that are available.

The HPR fails to take into account the fact that condominium utilization entails substantially more private vehicles than hotel utilization. Hotel guests tend to need no more than one parking space per unit, even if the unit is occupied by multiple guests. Many tourists need no spaces at all because they rely on buses or taxis for transportation.

Chairman John Z. Arroyo April 13, 2016 Page 6 of 8

Condominium residents, on the other hand, tend to need as many parking spaces as there are adult occupants. Utilization is dramatically higher for condominium usage.

This Commission has expressed profound concern about the adequacy of parking at the ABT project. For example, in August 14, 2008 Commission meeting, Chairman Lather, who was then evaluating the ABT's proposed HPR for changes said the following: "So based on what you [ABT representative Brooks] said, the first obvious question leaps right out at me is, you told us that the justification for the conversion of hotel rooms was based on the lack of parking, so if you go back to condos would you have that problem again?

4. Density Concerns

Throughout the long history of the ABT project, this Commission has also expressed concern about the density implications of the ABT project. A review of the minutes of Commission meetings reveals long debates between former Chairman Lather, other Commission members and ABT representatives about approving a proposal that effectively endorsed density of 400 square feet for each dwelling instead of the customary 1250 square feet benchmark.

For example, during the June 28, 2012 meeting, Chairman Lather asked Commission consultants to advise the Commission about the propriety of the ABT density implication as follows:

<u>Chairman Lather</u> Let me ask Richard, Joe and Martin, you guys have been around a long time. Have we ever used 400 to calculate density for a multifamily project in any zone?

<u>Joe Santos</u> In any zone, multifamily dwelling 1250; that's the set number.

Chairman Lather Never in history?

(<u>Joe Santos</u> responded never in history).

<u>Chairman Lather</u> The problem there is that, in my thinking is that if we do it we're going to have to do it forever. How can we deny the next person?

Chairman John Z. Arroyo April 13, 2016 Page 7 of 8

The record is not at all clear how these concerns were addressed prior to the 2012 approval of ABT's application. The Commission should be concerned about the density regarding the instant application, but more importantly about setting adverse precedent going forward.

5. Detrimental to ABC's Business

The Proposed arrangement would be demonstrably detrimental to ABC. When actively operated as a hotel property, ABC experienced on average 20-30 customers per day from ABT hotel guests. The Cho group has been leasing 95% of the 102 hotel units as condos for the past 12 years. During that time, ABC has averaged less than five ABT customers a month, which situation will be made fixed and permanent upon ABT's conversion to an all condominium project. That is a loss of roughly 20 customers per day, at an average net sales price of \$65.00 per customer, 310 days per year.

6. The Cho Group has been Operating ABT in a Manner Inconsistent with the Existing HPR Without GLUC approval

The proper procedure is for an applicant to request approval from the GLUC before changing a site plan. In this instance, however, the Cho group has gone forward with various constructions of additional buildings and facilities at ABT and changed uses of existing facilities without first seeking GLUC approval.

In the minutes of the GLUC August 28, 2008 meeting, Mr. Cho candidly admitted that he had stopped running a hotel and was operating all 102 hotel units as condos with a "95% occupancy" based on long term leases to military and local residents. Mr. Cho attended that meeting to seek permission to change the ABT HPR from hotel to condo utilization and not to tell the GLUC that he already done so without its permission. Essentially, the Applicant is attempting to use its non-compliance with the existing HPR as a reason for the Commission to change it. This is a complete violation of agreements with ABC and, more disturbingly, an act of open defiance of this Commission's authority to approve (or disapprove) HPR changes or amendments.

The Cho Group's fast and loose utilization of the subject units has vast consequences. Essentially, the Group has been trying to have things both ways. It has been leasing 95% of the 102 hotel units as condos for the past 12 years at rents of around \$2,500.00 per month while ostensibly operating as a hotel and presumably has not paid the Government of Guam the estimated 11% hotel occupancy tax due.

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ATTACHMENT E

DIPĂTTAMENTON MINANEHAN TĂNO'
(Department of Land Management)
GUBETNAMENTON GUĂHAN
(Government of Guam)



EDDIE BAZA CALVO

RAY TENORIO Lleutenant Governor



MICHAEL J.B. BORJA Director

DAVID V. CAMACHO Deputy Director

April 7, 2016

MEMORANDUM

TO:

Chairman, Guam Land Use Commission

FROM: Guam Chief Planner

SUBJECT: Commission Brief - Compliance to Conditions of Approval of Application No.

2008-003B, Amended Tentative Development Plan for Lot Nos. 5131NEW,

5131-1, 5126-3-1NEW, Tumon, Municipality of Tamuning

As noted on the attached January 14, 2016 GLUC Agenda- Disposition, the applicant, in response to the "Order to Show Cause" issued by the Commission on December 2, 2015 was entertained by the Commission under "Administrative and Miscellaneous Matters" for the applicant to present a complete and exact plan on what the applicant's intent is and what is currently being done at the subject development site.

The Commission in response to the above and their position that the approved Tentative Development Plan (TDP) for the subject development has expired, approved (NOA attached) the extension of the applicant's existing Notice of Action with a new expiration date of December 31, 2016 subject to the following conditions.

- The applicant is to come before the Commission in 60 days from January 14, 2016 to present an Amended Tentative Development Plan and will work with the Chief Planner to arrive at the amount of the Amended tentative development that will be the basis of the 110% performance and payment bond computation that is required for this application.
- 2. All conditions of the original NOA remains unchanged until the applicant submits the amended tentative development plan which includes the 6-month status report that is required on the NOA dated 3/29/2013

In consultation with the applicants' representative after the January 14, 2016, GLUC hearing, case planner suggested that since the due date for the 6-month status report falls on the 28th of March, to also include a status report of the development as part of the submission package.

Street Address: 90 S. Marine Corps Drive Suite 733 ITC Building Tamuning, GU 96913

Mailing Address: P.O. Box 2950 Hagåtňa, GU 96932

Website: http://dlm.guam.gov

E-mail Address: dlmdir@land.quam.gov

Telephone: 671-649-LAND (5263)

Facsimile: 671-649-5383



Commission Brief - Application No. 2008-003B Lot Nos. 5131NEW, 5131-1, 5126-3-1NEW, Tumon Municipality of Tamuning April 7, 2016 Page 2 of 2

That the bond required will need to be in favor of the government and that the amount of the bond will be the amount of the amended TDP. In addition, case planner provided a sample performance bond as reference.

On April 7, 2016 the applicants' representative submitted the attached "Status Report and Amendment to Tentative Development Plan" in response to the conditions of the January 14, 2016, Consisting of;

A brief status report on the on-going construction of the improvements for water, sewer, power and parking lot facilities, estimated to be at 18.25% completed.

The difficulty of securing a performance bond assigned to the Government of Guam, that as of January 14, 2016 a contractor's performance bond exists for the on-going construction and that the applicant suggest that in lieu of the performance bond GLUC and DPW will not release the Occupancy Permit or proceed to the next phase if the company fails to complete the required infrastructure project.

The applicant also submitted in its entirety the amended Tentative Development Plan that was originally approved by the Commission on March 28, 2013 in response to the Commissions' January 14, 2016 action.

We have review the applicant's submittal and at this time reserved our response and remit it to the Commission for their action.

Marvin D. Aguilar Chief Planner

ATTACHMENTS:

Status Report and Amended TDP dated April, 2016 January 14, 2016 GLUC Agenda Disposition

NOA Dated Jan. 19, 2016

Case Planner:

Frank .P. Taitano

	Government of Guam and Management Officer of the Recorder
COLMON.	6 Month 02 Day 03 Time 9-11
(Space above for Reco	ordation) Luca U. Occidano LISA M. QUITANO
IMPORTANT NOTICE - READ	CAREFULLY
"Pursuant to Section 5 of Executive Ord apply for and receive a building or grad GLUC/GSPC project within one (1) year of the Notice of Action, otherwise, the approval of Commission shall expire. This requires application for Zone Change***."	ing permit for the approved the date of Recordation of this
GUAM LAND USE CON Department of Land Mana Government of Guar P.O. Box 2950 Hagåtña, Guam 969	gement COPY
NOTICE OF ACT	TION
<u>January 19, 201</u> Date	<u>6</u>
To: Grandview Development, LLC c/o Felix C. Benavente 2149 San Miguel Building, Suite 1, Army Drive Dededo, Guam 96929	Application No. 2008-003B
The Guam Land Use Commission, at its meeting on	<u>January 14, 2016</u> .
/ Approved/ Disapproved <u>XX</u> / A	pproved with Conditions;
The extension of the existing Notice of Act Tentative Development Plan (TDP) on Lot Nos. Municipality of Tamuning.	

Grandview Development, LLC RE: Lot Nos: 5131NEW, 5131-1 & 5126-3- Municipality of Tamuning GLUC Hearing Date: January 14, 2016 Date: January 19, 2016 Page 2 of 4	INEW	
ZONING	SUBDIVISION	
/ Zone Change***	/ Tentative	
/ Conditional Use/ Zone Variance [] Height [] Use	/ Final	
[] Height [] Use [] Other (Specify)	/ Extension of Time	
XX / Extension of Notice Of Action for an Approved Amended Tentative Development Plan	/ PL 28-126, SECTION 1(A)	
***Approval by the Guam Land Use Commission FINAL APPROVAL but rather a recommendation to be notified upon action taken by the Governor. 61(Zoning Law), Section 61634 (Decision by the Co	of a ZONE CHANGE DOES NOT CONSTITUTE the Governor for his approval. Applicant shall [Reference 21 GCA (Real Property), Chapter	
SEASHORE	HORIZONTAL PROPERTY REGIME	
/ Wetland Permit		
/ Seashore Clearance		
	/ Supplementary (Specify)	
MISCELLANEOUS		
/ Determination of Policy and/or Definitions		
/ Other (Specify)		

NOTICE OF ACTION

Application No. 2008-003B

Grandview Development, LLC

RE: Lot Nos. 5131NEW, 5131-1 & 5126-3-1NEW

Municipality of Tamuning

GLUC Hearing Date: January 14, 2016

Date: January 19, 2016

Page 3 of 4

<u>APPLICATION DESCRIPTION</u>: The applicant, Grandview Development, LLC in response to an "Order to Show Cause" as to the reason(s) for failure to comply with the conditions of approval of an amended TDP for the Grandview Shopping Mall as noted on the GLUC Notice of Action dated March 29, 2013, presented its status report on the Tumon Bay Shopping Center, on Lot Nos. 5131, 5131-1, 5126-1-R1, 5126-3-1, 5126-1 and 5132-R1, in the Municipality of Tamuning.

<u>COMMISSION DECISION:</u> The Guam Land Use Commission approved the extension of the applicant's existing Notice of Action with a new expiration of December 31, 2016, subject to the following conditions;

- 1. The applicant is to come before the Commission in 60 days from January 14, 2016 to present an Amended Tentative Development Plan and will work with the Chief Planner to arrive at the amount of the Amended tentative development that will be the basis of the 110% performance and payment bond computation that is required for this application.
- 2. All conditions of the original NOA remains unchanged until the applicant submits the amended tentative development plan which includes the 6-month status report that is required on the NOA dated 3/29/2013

Marvin Q. Aguilar

Guam Chief Planner

Date

John Z. Arroy

Chairman/

Guam Land Use Commission

Date

Case Planner: Frank P. Taitano Cc: Building Permits Section, DPW

Real Property Tax Division, Department of Revenue and Taxation

NOTICE OF ACTION

Grandview Development, LLC RE: Lot Nos. 5131NEW, 5131-1 & 5126-3-1NEW

Municipality of Tamuning
GLUC Hearing Date: January 14, 2016

Date: January 19, 2016

Page 4 of 4

CERTIFICATION OF UNDERSTANDING

Application No. 2008-003B

I/We(Applicate	nt [Please pri	nt name])	Richard J (Representative [P	Please print name])	
building or g	rading per in one (1) erwise, th	rmit must be year of the approval	obtained for the ap	Order 96-26, that a proved GLUC/GSPC on of this Notice of as granted by the	
The Commis	sion may iod at the t	grant two (2) one-year extens	sions of the above	
This requirement shall not apply for application for a Zone Change***					
attached to this	ther <u>AGRE</u> Notice of A	E TO ANY AN action as manda	ID ALL CONDITIONS	a part of the Notice of <u>S</u> made a part of and om the Guam Land Use	
Signature of Ap	pplicant	Date	Signature of Repo	2/2/15 resentative Date	
			9		
ONE (1) COPY OF RECORDED NOTICE OF ACTION RECEIVED BY:					
Applicant			(Tal)	ا/بالح	

GUAM LAND USE COMMISSION



Chairman John Z. Arroyo Commissioner Conchita D. Bathan Commissioner Tricee P. Limtiaco Vice Chairman Victor F. Cruz Commissioner Tae S. Oh

Michael J.B. Borja, Executive Secretary Kristan Finney, Assistant Attorney General

AGENDA - Disposition

Regular Meeting Thursday, January 14, 2016 @ 1:30 p.m.

Department of Land Management Conference Room 590 S. Marine Corps Drive, 3rd Floor, ITC Building, Tamuning

- I. Notation of Attendance [X] Quorum 1:45 pm [] No Quorum
 Present were: Chairman John Arroyo, Vice Chair Victor Cruz, Commissioners Conchita Bathan and Tae Oh,
 Executive Secretary Michael Borja, Legal Counsel Kristan Finney, Guam Chief Planner Marvin Aguilar, Case
 Planner Frak Taitano and Recording Secretary Cristina Gutierrez.
- II. Approval of Minutes
 - GLUC Regular Meeting of Thursday, December 10, 2015
 - GLUC Special Meeting of Tuesday, December 22, 2015

[Motion to approve the Minutes of December 10th and December 22nd, 2015 was passed unanimously; 4 ayes, 0 nay] [NOTE: No changes received from the Commissioners]

- III. Old or Unfinished Business [None]
- IV. New Business [None]
- V. Administrative and Miscellaneous Matters

Order to Show Cause

A. The Applicant, Grandview Development, LLC; order to show cause as to the reason(s) for failure to comply with the conditions of approval of an amended TDP for the Grandview Shopping Mall as noted on the GLUC Notice of Action dated March 29, 2013. [Continuation: GLUC Hearing – November 12, 2015]

Case Planner: Frank Taitano

[Action: Commission Bathan made a motion to approve the extension of the applicant's existing Notice of Action with a new expiration of December 31, 2016; in addition, the applicant was hereby requested to come before the Commission in 60 days to present an amended tentative development plan and will work with the Chief Planner to arrive at the amount of the amended tentative development that will be the basis of the 110% performance and payment bond computation that is required for this application; all conditions of the original NOA remains unchanged until the applicant submits the amended tentative development plan which includes the 6-month status report that is required on the NOA dated 3/29/2013[[Motion was passed unanimously; 4 ayes, 0 nay]

VI. Adjournment [4:05 p.m.]

FC Benavente, Planners

Planning, Zoning, Land Development Consulting, Permitting 127 Bejong Street, Barrigada, GU 96913
Tel: 671.687.9865 richardisana@yahoo.com

April 4, 2016

Mr. Michael Borja
Executive Secretary
Guam Land Use Commission
Department of Land Management
PO Box 2950
Hagatna, Guam 96910

Subject:

Status Update and Amendments for the Tumon Bay Mall (Grandview

DevelopmentLLC)

HafaAdai Mr. Borja:

The Phase IA construction of the Tumon Bay Mall project involving civil works, infrastructure improvements sewer, water, power and parking lot facilities are on-going and estimated to be at 22% complete. The estimated completion date of Phase IAwould be at the end of year 2016 (December 31, 2016) due to change ordersmostly due to soil conditions and relocation of the ponding basin.

The performance bond required by the GLUC for 110% of the total infrastructure cost (construction of improvements for water, sewer, and power) is problematic. A sample format has been obtained recently from DLM and provided to the insurer. There is difficulty securing the performance bond due to the unfamiliarity by the insurance company regarding the assignment of the bond to Government of Guam. As noted at the GLUC meeting on January 14, 2016, a performance bond in the amount of \$3.615M already exists from the contractor and because Grandview Development, LLC has a different Insurance Carrier than the Contractor, our insurance company cannot issue a performance bond to guarantee an existing bond issued by another company. Therefore in lieu of the Performance Bond, we agree that GLUC or DPW not to release the occupancy permit or proceed to the next phase if Grandview Development, LLC fails to complete the required infrastructure improvements.

We are also submitting the following proposed amendments to the approved Tentative Development Plan, which includes the removal of the proposed Night Market from the plan and the integration of acquired properties not shown in the original site plan(see amended site plan attached).

- Amend condition C. of Notice of Action, Dated March 29, 2013 to conform with new amended site plan submitted.
 - o Notation: (NEW) GROUND PARKING Space Area Reserved to Relocate 91+Spaces Due to Site Modifications For:
 - 1. Entrance Park Landscaping;
 - 2. New Bus Parking & Loading/Unloading Areas;
 - 3. Vehicle Turn-Around Circle Modification;
 - 4. Expanded Container Parking; and
 - 5. "Joint Parking:" with proposed *Guam International Market* Located on Lot 5132-1
- Extension of timeline for completion of Phase IA. (New timeline December 31, 2016)
- Approval of 712 parking stalls including 5 bus parking(within zoning requirements of 700 stalls, original was 805 due to the joint parking requirement with the Night Market).
 Adjustments were necessary due to terrain features of acquired lots.
- Construction of 4 bus shelters.
- Approval of amended site plan submitted.
- Phase 1B Shopping Center is envisioned for 4-year completion. This is a separate timeline from civil works and infrastructure improvements noted above in Phase 1A.
- Extension of timeline for condominium building twin towersfollowing the opening of the Shopping Mall.

We trust this update meets the Commission's expectations and thank you for your consideration of the proposed amendments.

Sincerely,

Richard J. Sana Principal Planner

